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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~239.~~ 24

JAMES BROWN AND WILLIAM SEAVEY, APPELLANTS,

vs.

ENOCH PIPER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 14, 1873.

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1 UNITED STATES OF AMERICA,
Massachusetts district, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Tuesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and seventy-two, before the honorable George F. Shepley, circuit judge.

ENOCH PIPER, COMPLAINANT,
v.
JAMES BROWN ET AL., DEFENDANTS. } In equity.

The bill of complaint in this cause was filed in the clerk's office
2 on the eleventh day of October A. D. 1866, and was duly entered at the May term of this court A. D. 1866, and is in the words and figures following, namely:

3 *Bill of complaint.—Filed Oct.* 11, 1866.

To the judges of the circuit court of the United States for the district of Massachusetts:

Enoch Piper, of Camden, in the county of Knox, and State of Maine, a citizen of the State of Maine, brings this his bill against James Brown, of Charlestown, in the county of Middlesex, and State of Massachusetts, a citizen of the State of Massachusetts, and William Seavey, of said Charlestown, a citizen of said State of Massachusetts.

And thereupon your orator complains and says that your orator did invent a certain improvement in the method of preserving fish, and that thereupon he made application for letters-patent of the United States therefor, and complied with the provisions of the law in that case made and provided; and thereafter, to wit, on the nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-one, letters-patent of the United States, signed by Caleb B. Smith, Secretary of the Interior, sealed with the seal of the Patent-Office, and countersigned by S. T. Shugert, Acting Commissioner of Patents, were issued to your orator, granting to him, his heirs, administrators, and assigns, for the term of seventeen years from the nineteenth day of March, one thousand eight hundred and sixty-one, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement and method in preserving fish; and
4 said letters-patent were duly delivered to your orator, and are now ready to be produced before this honorable court as your honors shall direct.

And thereafter your orator did invent an improvement in apparatus for preserving animal and vegetable substances; and that thereupon he made application for letters-patent of the United States therefor, and complied with the provisions of law in that case made and provided; and thereafter, to wit, on the fifth day of August, in the year of our Lord one thousand eight hundred and sixty-two, letters-patent of the United States, signed by I. P. Usher, Acting Secretary of the Interior, sealed with the seal of the Patent-Office, and countersigned by John L. Hayes, Acting Commissioner of Patents, were issued to your orator, granting to him, his heirs, administrators, and assigns, for the term of seventeen years from the fifth day of August, one thousand eight hundred and sixty-two, the full and exclusive right and liberty of making,

constructing, using, and vending to others to be used, the said improvement in apparatus for preserving animal and vegetable substances, and said letters-patent were duly delivered to your orator, and are now ready to be produced before this honorable court as your honors shall direct.

And after the issuing of the first-named letters-patent, your orator put the invention secured by them in practice; and after the issuing of the said second-named letters-patent, he put into practice the invention secured by them; and your orator is now, and has been at all times, the sole and exclusive proprietor and owner of all the rights and privileges secured by the two several letters-patent so granted as aforesaid.

And your orator further shows to this honorable court that the subject-matter of the said first-mentioned invention was the preserving of fish by artificial cold; and that the manner in which it was to be carried into effect, in brief, was stated in said letters-patent to be "preserving fish or other articles in a close chamber by means of a freezing-mixture, having no contact with the atmosphere of the preserving-chamber;" and that the subject-matter of the second-mentioned invention was a
5 form of apparatus carrying into effect said first-mentioned invention by means of perpendicular tubes, to contain the freezing-mixture, and passing through the refrigerating-chamber, said tubes being arranged in connection with supply-pans and draining-apparatus, to secure a more perfect operation of the refrigerating-process.

And your orator well hoped that he might enjoy the benefits of his said invention, and receive the gains and profits arising from the same, and might keep the use and employment of said inventions to himself and his licensees as by right he ought.

But now so it is that the said Brown & Seavey, who are merchants, and copartners, doing business in Boston, in the county of Suffolk, and State of Massachusetts, and engaged in the purchase and sale of fish, were desirous of practising the said inventions of your orator, and applied to him for a license so to do, but your orator refused; and that then the said defendants, contriving how to injure your orator in the premises, and deprive him of the just gains and profits he ought to have from the practice of his said inventions, and wholly in disregard of your orator's rights, did, at some time unknown to your orator, but before the bringing of this bill, and without your orator's license, permission, or knowledge, erect at said Charlestown a certain apparatus to accomplish the purpose of preserving fish by the means and method patented to your orator by the said first-mentioned letters-patent; that is to say, a close chamber, having certain tubes, pipes, or boxes, passing perpendicularly through the same, said boxes, tubes, or pipes being supplied with a freezing-mixture, and said freezing-mixture having no contact with the air of the chamber. And your orator further charges that said chamber so constructed was in violation of your orator's rights, as secured by said second letters-patent; that is to say, that it was constructed with a pan or pans, to contain the freezing-mixture, in combination with vertical tubes, drained by horizontal tubes arranged at their lower extremities.

And your orator further shows unto your honors, that said defendants, after erecting the said apparatus or chamber, did place within the same for preservation, according to the method so invented by and patented
6 to your orator, certain fish, of an amount and kind unknown to your orator, and did freeze and preserve them in the method invented by and patented to your orator, and did make great gains and profits by said use and employment of your orator's said inventions; and they now, as your orator is informed, continue the employment and

use of said inventions and apparatus above described, and threaten to use and employ them still further to their own profit and advantage, and to the manifest wrong and injury of your orator.

All which acting and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oath, and according to the best of their several and respective knowledge, remembrance, information, and belief, answer such of the following interrogatories as, by the note at the foot of the bill they are respectively required to answer; that is to say:

1. Whether the defendants, or either of them, knew that your orator was proprietor of a patented process for preserving fish?

2. Whether the defendants, or either of them, knew the nature of such process; and if yea, how did they come by such knowledge?

3. Whether the defendants, or either of them, or any person by their authority, ever attempted to negotiate with your orator for the purchase of a license under your orator's process, and under what circumstances?

4. Whether the defendants have caused to be erected a refrigerating or congealing apparatus, as described in this bill, at Charlestown or elsewhere; and if so, of what construction, and how was it employed?

5. Whether or not the said defendants employed a freezing-mixture in said apparatus to produce the refrigerating effect; and if so, what mixture?

6. Whether the defendants are copartners, as alleged, and are engaged, as alleged, in the purchase and sale of fish?

7. Whether or not the defendants have ever preserved any fish, or other perishable animal or vegetable matter, by the method or means described and set forth in said first-mentioned letters-patent, or said second-mentioned letters-patent, or by any other means or manner in which a freezing or cooling mixture other than simple ice was employed to cool a close chamber, with the air of which the freezing or cooling mixture did not come in contact; and if so, when, where, and what quantity?

8. Whether the defendants have sold any such fish so prepared and preserved; and if so, when, and how much?

9. Whether the defendants have said refrigerating-apparatus now in use; and, if so, how much fish or other perishable animal or vegetable matter are they preserving by use of it; and if not now in use, how long has it been out of use?

And that the said defendants may be enjoined from using, employing, or practising your orator's two said inventions, or either of them, during the term of time for which respectively they are secured to him by letters-patent as aforesaid, and may be decreed to account to your orator for the gains and profits so acquired by them from the unlawful use of his said inventions, and to pay over the same to your orator, and that your orator may have such further and other relief in the premises as to your honors shall seem meet, and the nature and circumstances of the case may require:

May it please your honors to grant unto your orator a writ of subpœna, issuing out of and under the seal of this honorable court directed to the said James Brown and William Seavey, commanding them to appear at a certain day and time, and under a certain penalty therein to be limited, and answer the premises; and further, to stand to, per-

form, and abide the further order, direction, and decree of this honorable court in the premises, together with a writ of perpetual injunction, thereby forbidding them from using, employing, or practising your orator's said inventions, and also an order of preliminary injunction forbidding the said defendants, their servants, agents, or attorneys, from using, employing, or practising your orator's said two inventions, or either of them, to the extent to which they are secured to him by the said two letters-patent aforesaid.

And your orator shall ever pray, &c.

ENOCH PIPER.

THO'S W'M CLARKE, *of Counsel.*

8 NOTE.—Each defendant is required to answer all the interrogatories.

THO'S W'M CLARKE.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District, ss:

On this eleventh day of October, A. D. 1866, personally appeared Enoch Piper, whose name is signed to the bill, and made oath that he has heard the said bill and knows the contents thereof, and that the allegations thereof, so far as they are stated of his own knowledge, are true, and as to those stated on information and belief, he believes them to be true.

Before me.

JOHN G. STETSON, *Clerk.*

This cause was thence continued to the October term of this court, A. D. 1866, when the honorable John Lowell, district judge, sitting and holding said court, the cause was set down for hearing on motion for an injunction, and fully heard.

This cause was thence continued to the May term of this court, A. D. 1867, when, on the sixth day of June, it was ordered that a writ of injunction issue against the defendants, as prayed in said bill, until the further order of court.

This cause was thence continued to the October term of this court, A. D. 1867, when, on the fourth day of January, the following amended bill of complaint was filed by leave of court, without prejudice to the existing injunction, namely:

9 *Amended bill of complaint.—Filed by leave Jan.* 4, 1868.

To the honorable the justices of the circuit court of the United States for the district of Massachusetts, sitting in equity:

Enoch Piper, of Camden, in the county of Knox and State of Maine, a citizen of said State, brings this, his amended bill, against James Brown, of Charlestown, in the county of Middlesex, and State of Massachusetts, and William Seavey, of said Charlestown, both citizens of said State of Massachusetts:

And thereupon your orator complains and says that your orator did invent a certain improvement in the method of preserving fish and other articles, and that thereupon he made application for letters-patent of the United States therefor, and complied with the provisions of the law in that case made and provided; and thereafter, and in pursuance of

said application, to wit, on the nineteenth day of March, in the year of our Lord 1861, letters-patent of the United States, signed by Caleb B. Smith, Secretary of the Interior, sealed with the seal of the Patent-Office, and countersigned by S. T. Shugert, Acting Commissioner of Patents, were issued to your orator, granting to him, his heirs, administrators, and assigns, for the term of seventeen years from the nineteenth day of March, 1861, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement in the method of preserving fish and other articles; and
10 said letters-patent were duly delivered to your orator, and are now ready to be produced before this honorable court as your honors shall direct.

And thereafter your orator did invent an improvement in apparatus for preserving animal and vegetable substances, and that thereupon he made application for letters-patent of the United States therefor, and complied with the provisions of law in that case made and provided; and thereafter, and in pursuance of the said application, to wit, on the fifth day of August, in the year of our Lord 1862, letters-patent of the United States, signed by J. P. Usher, Acting Secretary of the Interior, sealed with the seal of the Patent-Office, and countersigned by John L. Hayes, acting Commissioner of Patents, were issued to your orator, granting to him, his heirs, administrators, and assigns, for the term of seventeen years from the fifth day of August, 1862, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement in apparatus for preserving animal and vegetable substances; and said letters-patent were duly delivered to your orator, and are now ready to be produced before this honorable court as your honors shall direct.

And, after the issuing of the said first-named letters-patent, your orator put the invention secured by them in practice; and, after the issuing of the said second-named letters-patent, he put in practice the invention secured by them; and your orator is now and has been at all times the sole and exclusive proprietor and owner of all the rights and privileges secured by the two several letters-patent so granted as aforesaid.

And your orator well hoped that he might enjoy the benefits of his said invention, and receive the gains and profits arising from the same, and might keep the use and employment of said invention to himself and his licensees as by right he ought.

But now so it is, that the said Brown & Seavey, who are merchants and copartners, doing business in Boston, in the county of Suffolk, and State of Massachusetts, and engaged in the purchase and sale of fish, contriving how to injure your orator in the premises, and deprive him of the just gains and profits he ought to have from the practice of
11 his said inventions, and wholly in disregard of your orator's rights, did, at some time unknown to your orator, but before the filing of this bill, and without your orator's permission or knowledge, erect and use at said Charlestown a certain apparatus for preserving fish and other articles, containing substantially the invention patented to your orator by the said first-mentioned letters-patent, and also that patented to him by the said second letters-patent, and has since continued so to use the same, in violation of your orator's rights as aforesaid.

And your orator further shows unto your honors that said defendants have made great gains and profits by said use and employment of your orator's said inventions, and they now, as your orator is informed, continue the employment and use of said inventions and apparatus above described, and threaten to use and employ them still further to

their own profit and advantage, and to the manifest wrong and injury of your orator.

All of which actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best of their several and respective knowledge, remembrance, information, and belief, answer such of the following interrogatories as by the note at the foot of the bill they are respectively required to answer—that is to say:

1. Whether they, or one, and which, of them, have, since the fifth day of August, 1862, constructed, or caused to be constructed, and put in use and used, an apparatus for preserving fish and other substances substantially like that described and represented in said patent of March 19th, 1861, or how differing therefrom, and substantially like that described and represented in said patent of August 5th, 1862, or how differing therefrom?

2. What articles and what quantities of articles they or either of them have preserved in the apparatus used by them or either of them?

And that the said defendants may answer the premises, and
12 may be enjoined from using, employing, or practising your orator's two said inventions, or either of them, during the term of time for which they are respectively secured to him by letters-patent as aforesaid, and may be decreed to account to your orator for the gains and profits so acquired to them from the unlawful use of his said inventions, and to pay over the same to your orator; and that your orator may have such other and further relief in the premises as to your honors shall seem meet, and the nature and circumstances of the case may require.

May it please your honors to grant unto your orator a writ of subpœna, issuing out of and under the seal of this honorable court, directed to the said James Brown and William Seavey, commanding them to appear at a certain day and time, under a certain penalty therein to be limited, and answer the premises; and further to stand to, perform, and abide the further order, direction, and decree of this honorable court in the premises, together with a writ of injunction, thereby restraining them from using, employing, or practising your orator's said inventions or either of them.

And your orator shall ever pray.

ENOCH PIPER.

NOTE.—Each defendant is required to answer both interrogatories.

UNITED STATES OF AMERICA,
District of Massachusetts, County of Suffolk, ss:

At Boston, in said county, this first day of January, A. D. 1868, personally appeared Enoch Piper, the complainant in the foregoing bill of complaint, and who has signed the same, and made solemn oath that he has read the same and understands the contents thereof, and that the matters and things therein contained, so far as they are stated as of his own knowledge, are true, and, so far as stated as of information and belief, that he verily believes the same to be true.

Before me.

[NOTARIAL SEAL.] N. AUSTIN PARKS,
Notary Public.

13 On the sixth day of February, A. D. 1868, the following answer was filed, namely:

Answer.—Filed Feb. 6, 1868.

And thereupon the said respondents, reserving to themselves all right of exception to the said bill of complaint, for answer thereunto, or unto such parts thereof as he is advised are material for him to make answer unto, answering, says:

That they have been informed and believe that the said complainant did make application for letters-patent of the United States for an improvement in the method of preserving fish and other articles, and that letters-patent were granted to him upon such application, bearing date the 19th day of March, A. D. 1861; but these respondents, for greater certainty, crave leave to refer to the original letters-patent, when the same shall be produced, and they do not admit that the said complainant was the true and original inventor of said improvements; nor that the said complainant did in truth invent said improvements; but they are informed and believe that said improvement was known and used before his application for letters-patent or pretended invention thereof.

And these defendants, further answering, say, that they have been informed and believe that the said complainant did make application for certain other letters-patent of the United States for an improvement in apparatus for preserving animal and vegetable substances, and that letters-patent for such improvement were granted to him upon such application, bearing date August the 5th, A. D. 1862; but these defendants for greater certainty crave leave to refer to the original letters-patent,

14 when the same shall be produced, and they do not admit that the said complainant was the true and original inventor of said improvements; nor that the said complainant did in truth invent said improvements; but they are informed and believe that said improvement was known and used before his application for letters-patent or pretended invention thereof.

And these defendants, further answering, say, that they do not admit that from and after the issuing of the said first letters-patent the said complainant put the pretended invention in practice. Nor do they admit that after the issuing of said second-named letters-patent he put into practice the pretended invention named in them; nor that the said complainant is now, and has been at all times, the sole and exclusive proprietor and owner of said improvements, and all the rights and privileges secured by the two several letters-patent as set forth in said bill of complaint.

And these defendants, further answering, say, that they do not admit, but deny, that the said complainant was to receive the entire gains and profits arising from the use and employment of said improvements and pretended inventions claimed to be secured to him by the two letters-patent aforesaid, and they deny that the said complainant was by right entitled to keep the use and employment thereof to himself and his licensees, but are informed and believe the contrary thereof to be true.

And these defendants, further answering, say, that they do not admit, but deny, that they did, contriving to injure the complainant and deprive him of the just gains and profits he ought to have had from the practice of said pretended invention, and wholly in disregard of said complainant's rights, at any time before the filing of said complainant's bill of complaint and without his license, permission, or knowledge, erect and use at said Charlestown, a certain apparatus for preserving fish and

other articles, containing substantially the invention claimed to be described and patented in the two letters-patent aforesaid, alleged to have been issued to said complainant, as the complainant in his said bill hath alleged, and have since continued to use the same in violation of his alleged exclusive rights, as aforesaid.

And these defendants, further answering, say, that they do not admit, but deny, that they have made great gains and profits by the use
15 of the complainant's alleged inventions; they deny that they continue the employment and use of the alleged inventions and apparatus described in said letters-patent, and they deny that they threaten to use the same still further to the wrong and injury of the complainant.

But these defendants admit and aver the fact to be, that they did erect and construct, at Charlestown aforesaid, an apparatus for preserving fish and other substances according to letters-patent granted to Charles F. Pike, of Providence, in the State of Rhode Island, bearing date , copies of which are hereto annexed and hereby made part of this their answer, and they have used and employed such an apparatus for the purposes aforesaid; but they deny that such apparatus, constructed according to such letters-patent, granted to said Charles F. Pike, is constructed substantially according to said letters-patent granted to said complainant, but aver that it is substantially different therefrom; and they deny that they have infringed or are infringing the rights secured to the said complainant by the letters-patent granted to him or claimed to be secured to him thereby, by constructing, using, and employing an apparatus constructed substantially on the plan patented by said complainant; but these defendants are advised, and so aver the fact to be, that the apparatus constructed, used, and employed by them differs entirely from that constructed according to the letters-patent granted to said complainant, in the mechanical devices used and the manner in which it is combined and arranged, and in its mode of operation and results.

And these defendants, further answering, say, that they are informed and believe that said complainant was not the original and first inventor or discoverer of the principle or thing patented, or of substantial parts thereof claimed as new; that is to say, he was not the original inventor and discoverer of the supposed invention or improvement specified and claimed in letters-patent of the United States, granted to the said complainant on the nineteenth day of March, A. D. 1861, for an improvement in the method of preserving fish and other articles, the said claim therein set forth being for "preserving fish or other ar-
ticles in a close chamber by means of a freezing-mixture having
16 no contact with the atmosphere of the preserving chamber, substantially as set forth." And in certain other letters-patent of the United States granted to the said complainant on the fifth day of August, A. D. 1862, for an improvement in apparatus for preserving animal and vegetable substances, the claim being, as therein set forth: First, the employment in refrigeratory apparatus of the removable receiving and distributing pan, D, in combination, the series of descending tubes, B, and suitable means of continuously draining the same, substantially as and for the purpose described.

Second, the tapering form of the descending tubes B, arranged to operate in combination with a receiving and distributing pan, D, and a cooling-chamber, M, substantially as and for the purpose specified.

Third, the arrangement in refrigeratory apparatus of the open as-

cending drain-tube F, relatively to the tubes C and B, in the manner and for the purpose set forth.

And these defendants, further answering, say that they are informed and believe, and intend to prove, that, anterior to the supposed discovery of the said supposed inventions by said complainant, the same were known and used in the places following, to wit: in Boston, &c., in New York, &c., in Philadelphia; and that knowledge of the same and of such use in the city of New York will be proved by Joseph H. Racey.

And these defendants, further answering, say that, anterior to the said supposed inventions by said complainant, the same or substantially the same process described and claimed under his patents was described in a patent granted under the laws of Great Britain to H. Benjamin and to O. H. Grafton, dated January 27, A. D. 1842, and published in the English specifications of patents for the year 1842, and numbered 9240 therein. Also in letters-patent of the United States granted to Thomas H. King, bearing date June 20, A. D. 1845, for improvement in refrigerators, and made public in the records of the Patent-Office of the United States.

And these defendants, further answering, say, in answer to the first interrogatory propounded in said bill of complaint—

That they have not, as they are advised and believe, constructed
17 any apparatus substantially like that described in the aforesaid patent of March 19, 1861, or substantially like that described and represented in said patent of August 5, 1862. That the apparatus constructed by them was built substantially according to the aforesaid patents granted to said Pike. That there is not in their said apparatus any close chamber, but the air of the preserving-chamber comes directly in contact with the ice or freezing-mixture.

And to the second interrogatory propounded, they say that they are advised that, as the apparatus used by them does not infringe any right, or claim, or pretended invention of the complaintant, they are not bound to give further answer.

And these defendants further deny, &c., without this, that there is any other matter, cause, or thing the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are willing and ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JAMES BROWN.
W'M SEAVEY.

SUFFOLK, *ss:*

FEBRUARY 3, 1863.

Then personally appeared the above-named James Brown and W'm Seavey, and Seavey made oath that they had read over the foregoing answer by them subscribed, and that the statements therein made by them are true so far as stated upon their knowledge, and so far as stated upon their information and belief, they believe them to be true.

Before me.

GEO. M. HOBBS,
Notary Public.

18 And on the same day, to wit, February 6th, 1868, the following replication was filed, namely:

Replication.

The replication of Enoch Piper, complainant, to the answer of James Brown and William Seavey:

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

By his solicitor.

I. J. CUTTER.

19 This cause was thence continued from term to term to the October term of this court, A. D. 1869, when the cause was set down for hearing, and fully heard, before the honorable George F. Shepley, circuit judge, and the honorable John Lowell, district judge, sitting together and holding said court; and thence the same was continued from term to term to the October term of this court, A. D. 1870, when, on the tenth day of November, the following decree was entered, namely:

Decree.

This cause coming on to be heard, after argument by counsel, and upon pleadings and proofs, it is ordered, adjudged, and decreed by the court as follows:

That the patent, dated March 19th, 1861, granted to Enoch Piper, the complainant, for an improved method of preserving fish and other articles, upon which this suit is founded, is a good and valid patent; and that the respondents have infringed the same; and that the respondents, and their agents and servants, be restrained and enjoined, until the further order of this court, by a writ of injunction issu-
20 ing therefrom, from using, employing, or practising the invention described and claimed therein; that the claimant recover of the respondent all gains and profits by them made from their infringement of said patent; and that it be referred to Edward F. Hodges, esquire, one of the masters of this court, to take account of said gains and profits, and state the same to the court; that the said master be, and he is hereby, authorized to require the respondents to appear before him from time to time, as he shall direct, and to produce their books, vouchers, and other documents necessary or pertinent to such accounting; that the complainant at such accounting have the right to examine the respondents ore tenus or otherwise, and that the parties have the right to produce before the said master such further evidence as they may severally deem proper.

21 This cause was thence continued from term to term to the

October term of this court A. D. 1871, when, on the seventh day of February, the master made the following report, namely:

Master's report.

To the honorable the justices of the circuit court of the United States for the district of Massachusetts:

In pursuance of a decretal order of this honorable court made in the above cause, the undersigned, one of the masters of this court, having been attended at several times by the parties complainant and respondent, and their respective counsel, and having examined the said parties, their witnesses, books, vouchers, and proofs produced before me, upon the matters by said decretal order directed to be inquired into, and having considered the same, does report:

The respondents are dealers in fish, having their place of business in Boston; their transactions embrace the purchase of salmon in the eastern British Provinces, Canada, and Maine, during the season of the "catch," and disposing of them in the markets of Boston and New York. Since 1866 they have preserved, in Charlestown and Cambridge, salmon, and to some extent other fish and game, by freezing, and keeping them in chambers maintained at a temperature below the freezing-point. This has been done by the use of a process in infringement of the plaintiff's patent, unless the transactions of 1870 form an exception to this.

In 1867 the respondents were prohibited from using this process by injunction issued in this cause. In 1868 and 1869 they preserved fish and other articles in an apparatus situated in the fruit-house in Cambridge, belonging to the Boston Fruit-Preserving Company the first year, and to the Massachusetts Fruit-Preserving Company the second year. Preserving fruit in this apparatus having been pronounced to be an infringement of the plaintiff's patent and prohibited by the injunction, they, in 1870, again resumed the preservation of fish in the Charlestown establishment, and made such alterations therein as to withdraw it, as the respondents contend, from the claims in the plaintiff's patent and relieve it from the prohibition of the injunction.

21*a*

The season of the "catch" of salmon is June, and July, and August. Between the 20th June and the 15th July they are most abundant in the market, and during that time the bulk of fish preserved as above named are withdrawn from the market for that purpose. The fish thus preserved are designed for sale at seasons when, by reason of their scarcity, they command a high price.

The respondents' accounts of their transactions in preserved salmon, &c., were kept in pass-books, one for each year, save 1868 and 1869, which were in one book, but the transactions of each year were distinct, the one from the other. Each year's operations were closed at the end of the season.

The order to take this account was issued to the master on the tenth day of November, 1870, and notice of a hearing to take place on the 15th of the same month was duly given.

After sundry hearings the respondents declined to render an account of the operations in 1868, and 1869, and 1870, as not within the decretal order; and this was, at the request of the complainant, reported to the court and the hearings suspended.

Subsequently, on the 31st of July, 1871, the hearings were resumed, and from time to time the respondents produced their accounts of the transactions for the years 1868, 1869, and 1870, as hereinafter stated.

The respondents' accounts are, for convenience, grouped into three

classes: the first embracing severally the years 1866 and 1867; the second, the years 1868 and 1869; and the third, 1870. These accounts were kept upon pass-books, which expressed the quantity of fish preserved at and sold from the above-named places, with the prices paid and received for the same. The cost of preserving was kept with less minuteness.

After the 20th of June, 1870, the respondents made alterations,
21*b* according to directions given by Mr. Harvey Waters, in their apparatus at Charlestown, by cutting openings in the upper part of the sides of the receptacle containing the freezing-mixture, through which the atmosphere of said receptacle passed and mingled with the atmosphere of the preserving-chamber, or room in which the frozen fish were kept. These openings were several feet in area, and amply sufficient for a free commingling of the atmosphere of the two rooms.

The respondents at the hearing claimed that the true account of the gains derived from their use of the infringing process would be as follows: after charging them with cash received from Robbins & Co. for preserving game not owned by the respondents, the sum of six hundred dollars, ($600.)

Salmon preserved by Brown & Seavey.

ACCOUNT.

1866. Receipts for preserved salmon for 1866	$8,155	68
Cost and expense of same	6,932	25
Balance of profit	$1,223	43
Deduct commission for sale and guarantee on gross amount, 10 per cent	815	56
Net profit received by B. & S.	$407	87
1867. Receipts for preserved salmon for 1867	$6,528	59
Cost and expenses of same	5,331	39
Balance of profit	$1,197	20
Deduct commission ut sup. 10 per cent	652	85
Net profit received by B. & S.	$544	35
1868. Receipts for preserved salmon for 1868, (after deducting receipts for sundry purchases from Piper of salmon, amounting in all to $106.90)	$7,508	03
Cost and expenses	6,730	78
Balance profit	$777	25
Deduct commission ut sup. 10 per cent	750	80
Net profit received by B. & S.	$26	45
22 1869. Receipts for preserved salmon for 1869	$8,551	63
Cost and expenses of same	10,148	33
Loss incurred by B. & S.	$1,596	70

No commission charged.

1870. Receipts for salmon preserved in 1870	$8,531 11
Cost and expenses	6,160 10
Gross profit	$2,371 01
Deduct commission ut sup. 10 per cent	853 11
Profit received by B. & S	$1,517 90

MACKEREL ACCOUNT.

Receipts for mackerel preserved by B. & S	$680 00
Cost of same	408 00
Profit	$272 00
Deduct commission ut sup	68 00
Profit received by B. & S	$204 00

WHITE-FISH ACCOUNT.

Receipts for white-fish preserved by B. & S	$276 37
Cost	211 77
Profit	$64 60
Deduct commission ut sup. 10 per cent	27 63
Profit received by B. & S	$36 97

BASS ACCOUNT.

Receipts for bass preserved by B. & S	$714 15
Cost of same	638 98
Profit, net, received by B. & S	$75 17

No commission charged.

The master finds that the respondents have derived, as gains and profits from the infringement of the complainant's patent, the sums stated in the schedules hereto annexed and duly designated,
23 amounting in all to eleven thousand four hundred and twenty-six $\frac{76}{100}$ dollars, ($11,426.76;) viz:

1866.

The respondents in the year 1866 preserved 24,245¾ pounds of salmon, from sales of which as preserved they received the sum of $8,155.68. They paid for these as green, unpreserved fish, $6,320.60, and expended in preserving them $611.65, leaving a balance of $1,223.43 as gains and profits of the transaction for the year 1866. The schedule hereto annexed and marked A exhibits the account of the operations for this year.

1867.

In the year 1867 the respondents preserved 24,954¾ pounds of salmon, from sales of which as preserved they received $6,528.59. These cost,

green and unpreserved, $4,467.65, and the respondents expended upon them in preserving $863.74, making the whole cost of the preserved fish $5,331.39, and leaving the balance of $1,197.20 as profits. The schedule hereto annexed, marked B, shows the operations of this year, with the gains and profits resulting from the infringement.

1868.

In the year 1868 the respondents preserved 17,583½ pounds of salmon, for which they received as preserved $7,508.03; these cost, green and unpreserved, $3,130.78. To the respondents the cost of preserving, at 3 cents per pound, was $527.50, making the whole cost of the preserved fish $3,658.28, and leaving as profit or gain upon the operations of this year $3,849.75. The schedule hereto annexed, marked C, exhibits this year's transactions, with the gains and profits derived from the same.

1869.

The respondents in the year 1869 preserved 27,683¾ pounds of salmon, for which they received $8,551.63 when sold as preserved.
24 For these they paid when green and unpreserved $5,948.33. To the respondents the expense of preserving them was, at 3 cents per pound, $830.50, making the total cost to the respondents $6,778.83, and leaving a balance as profit of the year's operation $1,772.80. The schedule hereto annexed, marked D, shows the transactions of this year, with the gains derived therefrom.

1870.

The respondents preserved in the year 1870 28,950½ pounds of salmon, for which, sold as preserved, they received $8,531.11. They paid for them, green and unpreserved, $4,565.78, and expended in their preservation $1,594.12, making the whole cost to the respondents $6,159.90, and leaving a balance as profits $2,371.21. The schedule hereto annexed, marked E, exhibits the account of this year's transaction, with the profits resulting therefrom.

BASS, &C., &C.

In 1868 the respondents preserved other fish, as follows:
Mackerel costing $408 sold for $680, leaving a balance $272.
White-fish costing $211.77 sold for $276.37, leaving a balance $64.60.
Bass costing $638.98 sold for $714.15, leaving a balance $75.77.
In 1869 they received from Robbins & Co., for preserving game, $600.
All of which is profit or gain derived from the infringement of the complainant's patent, and the same is entered in the schedule hereto annexed, marked F, wherein the gross sum of $1,012.77 is entered as an item chargeable to the respondents as aforesaid.
In the course of the hearing, the parties respectively, through their counsel, requested the master to make a special report of the facts found, and his rulings thereon, touching the following points, viz:
First. The complainant claimed that the respondents should be charged, in addition to the profits derived from the sales of the preserved fish, first, with all the increase in the price received by them for
25 green or unpreserved fish, occasioned by the removal of the preserved fish from the market; second, with all the profits resulting

from their ability to make more advantageous contracts with fishermen, by contracting to take their entire "catch," having means through the complainant's patented process to remove from the market for preservation any surplus fish that would have a tendency to cause a glut and reduce the market-price during the season of abundant supply; and, third, with the gains resulting from their attracting and retaining customers by reason of keeping on hand well-preserved fresh salmon in seasons of the year when they were not abundant in the market.

Second. The complainant insisted the respondents should be charged with the result of the operations in 1870, because, first, the alterations did not make their apparatus substantially different from that described and claimed in the complainant's patent; and second, because the respondents did not in fact preserve fish in the apparatus when those alterations were actually existing therein, but did in some way substantially restore it to the condition it was in before the alterations were made, and that the fish preserved in it were in fact preserved by use of a process substantially like that described in the plaintiff's patent. The complainant insisted —

Third. That the respondents should be charged with the whole gross results of the sales of preserved fish in the years 1868 and 1869, deducting therefrom the cost and only reasonable expenses of the preservation, but not deducting the items of $3,500 and $4,000 claimed by the respondents to have been paid as rent to the said fruit-preserving companies.

The respondents, controverting the above positions, claimed—

First. That commissions of five per cent. for sale and five per cent. for guarantee should be allowed them upon all fish preserved and sold by them, such being the usual commission paid for sale and guarantee in the fish trade.

Second. That the loss resulting from the operations of 1869 should be calculated and deducted from the profits resulting from the operations in other years.

These claims the complainant resisted.

26 Upon the claims thus specifically stated the master finds and rules:

I. The respondents, by preserving fish by said patented process, and withdrawing them from the market during the season of abundance, have been enabled to demand and have received a large price for their green unpreserved fish remaining in their hands for sale in the market.

That the price of the said remaining salmon, held by the respondents and not withdrawn for preservation, was enhanced in price one and one-half cents per pound. That the respondent sold in the market of said green or unpreserved fish, in the year 1866, forty thousand twenty and three-fourths pounds, (40,020¾.) In the year 1867 they sold sixty-six thousand eight hundred and five and one-quarter (66,805¼) pounds of salmon, also green and unpreserved. In the year 1868 they sold of like fish, eighty-two thousand six hundred and seventeen pounds, (82,617.) In the year 1869 they sold of like fish one hundred and twenty-one thousand two hundred and ten and one-half pounds, (121,210½.) In the year 1870, one hundred and two thousand nine hundred and fifty-nine pounds, (102,959;) in all amounting to four hundred and thirteen thousand six hundred and twelve and one-half pounds, (413,612½.)

That said respondents received for said salmon one and one-half cents per pound more than they would have done had they not withdrawn from the market the salmon preserved as aforesaid; and that the sum

of the profits resulting therefrom is six thousand two hundred and four dollars and nineteen cents, ($6,204.19.) The schedule hereto annexed, marked G, contains a statement of the said gains and profits. The master further finds that the gain and profits to the respondents resulting from said enhanced price of one and one-half cents per pound on the sales of green fish in the said year is not gain or profit with which the respondents are to be here charged, because it is an incident of trade too remote and indirect to be entered in this account. Whether it be so or not he submits to the court as matter of law.

The account entered in Schedule G is reported to the court for
27 the convenience of the parties in the event that the ruling of the master thereon should be qualified or reversed.

The master further finds that the respondents derived some advantage from being able by their use of the complainant's patented process to make better contracts with fishermen, and to attract and retain customers by providing fresh salmon at a season of the year when it was a rare luxury; but these advantages are too remote and too uncertain to be considered and have place in this account. The master does not make an estimate of the last-named advantages, as there were no data or proofs from which their value could be calculated.

II.—The operations of the year 1870.

The master finds that the respondents' apparatus at Charlestown was originally so constructed that its use by them for the purpose of freezing and preserving fish was an infringment of the complainant's letters-patent.

That after the 20th of June, and before the 3d of December, 1870, they made alterations therein by cutting openings in the sides of the pans containing the freezing-mixture of several feet area; that through these openings the air could pass freely from the freezing-mixture to the chamber containing the preserved articles; that the atmosphere of the two chambers mingled and became practically one atmosphere; and that the use by the respondents of the apparatus so altered to keep and preserve fish would not be an infringement of the complainant's letters-patent. The master further finds that their apparatus in which the respondents preserved salmon at Charlestown in 1870 did not contain the alterations, viz, the said openings through which the atmosphere of the two chambers could mingle; that all the chambers of said apparatus were altered as beforesaid, after the 20th of June, and before the 3d of December, 1870; that the only proof before the master concerning the state of the apparatus at the time the freezing and preserving was in progress, being all the time during the season of 1870, when articles were preserved in the preserving-chamber, is from Seavey, one of
28 the respondents, who testified upon this subject on the 12th day of December, 1870, and on the 21st day of August, 1871, under the circumstances and in the manner following, viz:

It was appointed by the consent of all parties that the master should, with the counsel, inspect the Charlestown apparatus on the 12th December, A. D. 1870. The master, accompanied by the complainant's counsel, Mr. Holmes, appeared at the appointed time at the Charlestown establishment. The respondents' counsel was not present.

The respondent Seavey opened all the chambers of the establishment but one for inspection. That one he declined to open or expose. He was reminded that he was then under examination upon the oath adminis-

tered at a previous meeting, and in answer to the question propounded by the complainant's counsel he said:

"That chamber has fish preserved in it, and I decline to open it; it is the same as the others and has the alterations in it."

The chambers at this time exposed and examined by the master were open, and had no fish or other article in them in preservation.

On the 21st of August, 1871, the respondent Seavey testified as follows:

"Mr. Hodges and Mr. Holmes examined our apparatus, but did not see the room in which the fish were; this was refused, because we did not wish to open the room on account of the fish.

"We opened the rooms for the purpose of taking out fish, sometimes once or twice in a day, according to the need. I don't remember that Mr. Holmes asked to see the room; he did ask to see the fish, and I said I would show him one. I understood him to wish to see the total, to go into the room to see the fish, and I told him I would bring one out; but he did not wish that. I did not wish to open the room.

"Q. (By complainant's counsel.) Have you this summer kept any fish in the Charlestown apparatus having the alterations in it which Mr. Waters described in his evidence?

"(Witness declines to answer.)

"Q. Have you frozen or preserved any fish this summer or had any frozen or preserved for you anywhere?

29 "(Respondents' counsel objecting to the question, the witness refuses to answer.)

"Q. How many pounds of fish did you keep last summer in the Charlestown apparatus having the alterations Mr. Waters described?

"A. I cannot tell.

"Q. Did you keep any account or cause any to be kept of the fish received in or delivered from that apparatus last summer?

"(Objected to.)

"A. There was an account kept the same as in previous years. It is at the store, I presume.

"Q. Will you produce it?

"A. When Mr. Clapp comes home.

"Q. Mr. Seavey, will you cause a search to be made for that book showing the account of fish in the summer of 1870, when you go to your store, and at the earliest possible time produce it to the master?

"A. I will have a search for it, and bring it as soon as it can be found.

"Q. Will you have a search made for it at once, or do you propose to wait for it until the first of September when Mr. Clapp comes home?

"A. I propose to have a search made for it now.

"Q. Were the fish which were frozen and preserved in the Charlestown apparatus, after the said alteration last summer, satisfactorily frozen and preserved?

"A. They were frozen so that we disposed of them that summer as in years previous. I don't know that we had any complaints as to their not being of good quality.

"Q. Were they frozen and preserved in all respects as well as those which had been frozen and preserved in that apparatus before such alteration was made?

"A. I don't know of any reason why they were not.

"Q. Do you think that they were?

"A. I do.

"Q. Did your customers, so far as you know, find them to be so?

"A. They did.

30 "Q. You had no complaints, then, from any of your customers as to the condition of the fish which had been so frozen and preserved last summer?

"A. I have no recollection of having any more complaint last season than the season previous.

"Q. Have you frozen or preserved any fish in that apparatus this summer?

"A. We have not.

"Q. What use have you made of it this summer?

"A. We have not used it."

The foregoing is all the proof produced before the master touching the condition of the apparatus while the work of preservation was in progress. Neither the other respondent, Brown, nor the men in charge of the work, were called to prove its condition at such times.

The account of the operations of this year was produced, and parties and witnesses were examined touching the details. In view of the rule requiring the party to produce the best evidence in his power, the master cannot accept, as proof of the condition of the apparatus when in use, the above-quoted testimony of Seavey, and the fact that an alteration had been made therein, nor can he receive such proof in substitution for the better evidence in the power of the respondents, viz, the testimony of the men having the management of the apparatus, and the personal inspection thereof by the master.

The master finds that the apparatus at Charlestown was originally so constructed that its use in freezing and preserving fish was an infringement of the complainant's patent, and that it was so used two seasons after it was built; that it was altered after the 20th of June, and before the 3d of December, 1870, in such respects as hereinbefore stated; that its use in freezing and preserving fish would not be an infringement, but that it could readily have been restored to its original condition or substantially so; that the fish preserved in it in 1870 were, when preserved, frozen, and in other respects similar to those preserved therein in infringement of the complainant's patent, and before the alterations were made; that the respondents did not explain the condition

31 of the apparatus in which they were preserved, or permit the manner or course of their operations when preserving or the structure of said apparatus at that time to be inspected; that the respondents have not used the apparatus so altered since the year 1870, for any purpose.

And as a presumption from the foregoing findings the master further finds that the said apparatus had, as used by the respondents in 1870, no communication between the freezing-mixture and the atmosphere of the preserving-chamber, and such use was an infringement of the complainants' patent, and the profit derived by them from such use was gain resulting from their infringement of said patent.

III.—The expenses of the operations of 1868 and 1869.

In these years the respondents preserved their fish in the fruit-house at Cambridge, under arrangements made in 1868 with the Boston Fruit-Preserving Company,. and for 1869 with the Massachusetts Fruit-Preserving Company. The arrangement for 1869 was reduced to writing, and was in the hands of the Massachusetts Fruit-Preserving Company. The complainant called on the respondents to produce it. Neither that writing nor the terms or stipulations of either of said arrangements

were produced or proved before the master. The testimony taken by the parties upon a motion made in this case for the arrest of the respondents for a contempt in violating the injunction by preserving fish in said fruit-houses, was, by consent, to be referred to by the master as proof.

The account of the operations of the fruit-house in the years 1868 and 1869 was kept by the respondents in a small pass-book, in which the transactions of each year were entered as distinct, one from the other.

On the first page, under the heading "Salmon & B. F. P. Co.," the account of 1868 commences, and thirteen items are entered, expressing the date, cost, and quantity (in pounds or numbers) of salmon sent for preservation. On the following ten pages are entered, in over two hundred items, the sales, with the dates, prices, quantities in pounds, and the initials of the purchasers. The accounts for 1869 succeed
32 this, with the intervention of a blank page, and under the heading "Salmon stored at ice-house," seven items are entered, showing the quantity in pounds or numbers, the cost of the salmon sent for preservation, and the dates when sent. On the following ten pages, and in over two hundred items, are entered the sales, with the quantities in pounds, the prices received, and the dates of sale.

On the said first page of the account of 1868, in the column showing the cost of the fish, was entered, in pencil, the figures "3600," preceded by the word, also in pencil, "Exp."

On the corresponding page, of the account for 1869, in the column showing the cost of the fish, was entered, in pencil, the figures "4200," preceded by the word, also in pencil, "Exp."

Mr. Seavey, one of the respondents, testified that the sums above named were the expenses of the work, of which $100 in 1868 and $200 in 1869 were composed of sundry small items, and $3,500 and $4,000 respectively was for rent. That these sums were paid in monthly installments to the said proprietors of the fruit-house, and receipts, of which the following is a copy, were given therefor when paid:

"$333 dolls. 33 cts. BOSTON, *Nov.* 1, 1869.

"Received of Brown, Seavey & Co. three hundred thirty-three dollars $\frac{33}{100}$ on account.

"N. C. PIKE, *Treas.*"

No further explanation was made of the arrangement between the fruit-preserving companies and the respondents, in compliance with which the sums of $3,500 and $4,000 were paid, or of the purposes for which said payments were made.

The rooms in the fruit-house used by the respondents contained in all about four hundred square feet on the ground, and were about ten feet high. The respondents' apparatus at Charlestown contained about the same number of cubic feet.

The work of preserving fish in this apparatus consisted in supplying the chamber over the preserving-chamber with freezing-mixture, composed of salt and ground or pulverized ice. This labor and the freezing-mixture were furnished by the fruit-preserving companies.

In 1866 the respondents preserved and sold 24,245¾ pounds of
33 salmon at an expense, exclusive of the cost of the fish, of $611.65, or a fraction over 2½ cents per pound.

In 1867 they preserved and sold 24,954¾ pounds of salmon, at an expense, exclusive of the first cost, of $863.74, or a little less than 3½ cents per pound, making the average expense of preserving for these two years three cents per pound.

For the year 1866 the rent was charged by the respondents at $100

per annum as an item of the expense, and so included in the sum of $611.65 above named. For the year 1867 they in like manner charged as rent $400, and it was an item included in the above sum of $863.74.

Deducting these items of rent from the general expenses for those years, and the whole remaining cost of preservation was, in 1866, $511.65 for 24,245¾ pounds, or $2\frac{11}{100}$ cents per pound; and for 1867, $463.74 for 24,954¾ pounds, or $1\frac{86}{100}$ cents per pound, making an average of almost two cents per pound for the two years.

In 1868 and 1869 the respondents sold of salmon preserved in the fruit-house 45,267 pounds. If it cost to preserve this the same (exclusive of rent) as in the two previous years, viz, two cents per pound, the same would equal $905.34.

The whole cost for preserving this fish for those years was charged by the respondents at $7,800. If from this sum $905.34 (the cost, exclusive of rent) is taken, there remains $6,894.66 as the amount charged for rent of the room used for the respondents' service. This is a trifle over thirteen cents per pound for rent alone.

For rent alone in 1866 and 1867, the respondents charged in their account a fraction over one cent per pound, or $500 for 49,200 pounds.

This whole cost of preserving for 1868 and 1869 charged by the respondents ($7,800) included rent, and as the whole amount preserved was 45,267 pounds, it makes the cost of preserving equal to seventeen cents per pound.

If these charges are viewed as rent or as general expenses attending the use of the patented invention, they present extraordinary contrasts. As rent, the cost was $6,894.66, or thirteen cents per pound in 1868 and 1869, while in 1866 and 1867 it was only $500, or one cent per pound.

As general expenses, the whole cost in 1868 and 1869 was $7,800
34 for preserving 45,267 pounds, or seventeen cents per pound; while in 1866 and 1867 it cost only $1,475.39 to preserve 49,200 pounds, or three cents per pound.

In view of the meagre proof made by the respondents touching the terms of their agreements with the fruit-preserving companies, of the discrepancy between the expenses in 1866 and 1867, when the respondents had no motive to understate the cost of their operations and the expenses in 1868 and 1869, when they had been warned by the decree in this case that they must account for the profits of their infringement, and of the entry in the respondents' books expressing the charge of these expenses, the master is compelled to disallow these items of $3,600 and $4,200.

In place of the charges made by the respondents for expenses as aforesaid, the master allows for said expenses the sum of $1,358.01, being three cents per pound for the fish so preserved in the two years. The transactions of these two years the master finds to stand thus: The fish, 45,267 pounds; cost, $9,079.11; to this add the expense of preservation as above found, $1,358.01, amounting in all to $10,437.12. These sold for 16,059.66, and the profits resulting to the respondents from the transactions is $5,622.54, all of which is duly set down in the schedules hereto annexed, marked C and D.

IV. The respondents' claim for commissions for sale and guarantee.

The respondents claimed commissions of 5 per cent. for sale on all fish sold, and five per cent. guarantee for the same.

The master finds that it is usual to allow a commission for sale and

guaranty in Boston market of five per cent. each to parties selling and guaranteeing for others.

The master finds that the respondents sold their fish themselves without the intervention of a third party, and he therefore disallows this item; but upon the several schedules hereto annexed he has added to each a duplicate account, in which he has stated the profits, with the commission of 10 per cent. deducted in all cases where it was claimed by the respondents.

35 V. The loss claimed by the respondents to have been made in the operations of 1869.

The respondents by their accounts show a loss in the transactions of 1869, and claim that it should be deducted from the profits resulting from the operations of other years.

The master finds that the respondents' business of preserving fish and selling them was one occupying but a portion of each year. Each year, at the close of the season, the accounts were closed, and at no time did the business of one year run into or connect itself with that of another. That the preserving in 1869 was done with a different party to that of 1868. The master therefore does not allow this deduction.

The master also finds that there was no loss incurred by the respondents in the year 1869, but a profit, as hereinbefore stated.

All of which is respectfully reported.

E. F. HODGES,
Master in Chancery.

SCHEDULE A.

No. 1.

Account of fish preserved by respondents in 1866.

24,245¾ lbs. salmon, cost		$6,320 60
Expenses of preserving		611 65
		$6,932 25
Salmon sold for	$8,155 68	
Gains and profits resulting from infringement		$1,223 43

No. 2.

	Salmon preserved as above—costs and expenses		$6,932 25
36	Gross receipts from sales of same	$8,155 68	
	Deduct 10 per cent. commission for sale and guarantee	815 56	
	Net receipts from sales	$7,340 12	$7,340 12
	Balance of gain and profits		$407 87

SCHEDULE B.

No. 1.

Account of fish preserved by respondents in 1867.

Salmon preserved, 24,954¾ pounds, cost	$4,467 65	
Expense of preserving	863 74	
Whole cost	$5,331 39	
Cash received for same	6,528 59	
Profits resulting		$1,197 20

No. 2.

Profits as above	$1,197 20	
Commission for sale and guarantee, 10 per cent. on sales	652 85	
Profit, deducting commission		$544 35

SCHEDULE C.

No. 1.

Account of fish preserved by respondents in 1868.

Salmon preserved, 17,583½ pounds, cost	$3,130 78	
Expense of preserving, at 3 cts. per lb	527 50	
Whole cost	$3,658 28	
Cash received for the same	7,508 03	
Profits resulting to respondents		$3,849 75

37 No. 2.

Profits as above	$3,849 75	
Commission for sale and guarantee, 10 per cent. on amount sales	750 80	
Profits, deducting commission		$3,098 95

SCHEDULE D.

No. 1.

Account of fish preserved by the respondents in 1869.

Salmon preserved, 27,683¾ pounds, cost	$5,948 33	
Expense of preserving at 3 cts. per pound	830 50	
Whole cost	$6,778 83	
Cash received for same	8,551 63	
Profit resulting to respondents		$1,772 80

No. 2.

Profits as above	$1,772 80	
Commission for sale and guarantee, 10 per cent. on amount sales	855 16	
Profit after deducting commission		$917 64

SCHEDULE E.

No. 1.

Account of salmon preserved by the respondents in 1870.

Salmon preserved, 28,950½ pounds, cost	$4,565 78	
Expense of preserving	1,594 12	
Total cost	$6,159 90	
Cash received for same	8,531 11	
Profit resulting to respondents		$2,371 21

38

No. 2.

Profits as above	$2,371 21	
Commission for sale and guarantee, 10 per cent. on amount sales	853 11	
Profit, deducting commission		$1,518 00

SCHEDULE F.

No. 1.

Account of sundries preserved by respondents.

Mackerel cost $408.00, sold for $680.00, profit	$272 00
White-fish " $211.77, " " $276.37, "	64 60
" " $638.98, " " $714.15, "	75 17
For preserving game for Robbins, cash	600 00
Profits resulting to respondents	$1,011 77

No. 2.

Profits as above stated	$1,011 77	
Commission 10 per cent. on amount sales of mackerel and white-fish, $680, $276.37=$956.37	$95 63	
Profit, after deducting commission		$916 14

39

SCHEDULE G.

Account of salmon sold green by respondents on which they derived gain by reason of withdrawing other salmon from the market for preservation, in infringement of the plaintiff's patent.

1866.—Salmon sold unpreserved,	40,020¾	
1867.— " " "	66,805¼	
1868.— " " "	82,617	
1869.— " " "	121,210½	
1870.— " " "	102,959	
Total amount sold in above years	413,612½	
Profit estimated at 1½ cts. per pound		$6,204 19

40 *Additional report.*

And now the master in the above cause makes this additional report:

After the draft of the foregoing report with the schedules annexed had been submitted to the counsel of the parties, the counsel for the respondents, Edward Avery, esq., addressed to the master a petition for leave to introduce further evidence as to the transactions of 1870, accompanied by affidavits purporting to present the said evidence. A copy of the petition is annexed, marked H.

The master, having submitted a draft of his report to the counsel before said petition was filed, did not feel at liberty to grant the prayer of said petition, deciding as matter of law that at the time when said petition was presented it was not competent for the master to hear further evidence or entertain said petition; he therefore refused to grant the prayer of the respondents therein contained.

The master further reports that the counsel for the respondents presented certain written objections to said report, and certain written requests as to the findings of the master; copies of which said objections and requests are hereto annexed, marked I and K.

To these the counsel for the complainant filed his written answers, and objected to any report of the testimony. The master overruled this objection.

The master having considered the said objections, requests, and answers, together with the proofs touching the subject-matters thereof, finds and reports specifically concerning each item, that is to say:

To the first objection: It incidentally appeared in the course of the hearing that the respondents erected the apparatus at Charlestown. But there was no evidence showing its cost, nor upon what arrangement with the owners of the land on which it was situated it was erected. The respondents claimed at the hearing to be allowed, as part of their expenses for the years 1866 and 1867, the amount
41 paid as rent as expressed in the receipts, copies of which are set forth in the schedule hereto annexed, marked L, and the same was allowed. The master finds that the respondents erected the apparatus at Charlestown.

To the second objection: No interest on the cost of erecting said apparatus was considered in making up the account of the gains resulting from the transactions of 1866 and 1867, nor was any account taken of the labor at the apparatus by men in the regular service of the respondents at their store. No claim was made touching said interest, or cost, or labor, nor was there any proof about the same, save that it incidentally appeared in the hearing that the said regular employees of the respondents did occasionally aid in the work about said apparatus. The master does not make any allowance for said interest or labor in any part of the accounts or calculations contained in this report.

To the third objection: The respondents objected to the master's entering upon the inquiry or taking any proof concerning the transactions of 1870. There were no objections taken to specific questions bearing upon these transactions. The master ruled that the decretal order issued to him directed him to inquire into and take account of any infringements of the complainant's patent made by the respondents in 1870 as well as in other years, and ordered the inquiry into the operations of that year to proceed.

To the fourth objection: The master finds and reports, if he has not already reported, that the respondents paid to the Fruit-Preserving

Company in 1868 thirty-five hundred dollars, and in 1869 four thousand dollars, nominally under mere contract for certain services rendered, and certain space, about three thousand cubit feet, occupied by the respondents at the fruit-house in Cambridge; that said contract was in writing, and the writing and its full terms were not disclosed to the master; that the said services and rent were in value very far below the said sums. And he further finds, as a conclusion drawn from the evidence herewith reported, that said payments were not bona fide payments for said rent and services, but were made under a collusive arrangement by which the respondents were to receive back
42 some portion or the whole; or were paid not as fair value of said rent and services, but as a reward to induce the companies or their employees to infringe the complainant's patent and violate the injunction of the court; and in either event the master decides that said sums are not properly chargeable in this account as items of expense.

At the request of the respondents' counsel, the master annexes hereto a schedule, marked M, which contains all the testimony bearing upon the transactions of the years 1868 and 1869, taken before the master.

The master transmits herewith a printed copy of the testimony taken on the petition to commit the respondents for violating the injunction. The master has expunged those passages which the respondents do not call for, by drawing black lines around and across them. The unexpunged passages, marked M, are parts of the testimony which the respondents request him to report. It is transmitted in this manner, instead of being copied in manuscript, for the convenience of the parties. The unexpunged passages reported by the master as evidence are marked in the margin with the letter designating the schedule to which they belong.

In said record the master designates as testimony bearing upon the subject of this fourth objection the following pages and passages, all marked M, as part of the said Schedule M, and which, with the above-copied testimony and exhibits, comprise the whole proof demanded by the respondents, viz:

The deposition of William Seavey, on pages 9 to 15, and 17 to 28, 29, 30, 34, 35, and 37.

The deposition of Oscar Doolittle, pages 47 to 52, 57 to 59, and 61 to 64.

The deposition of James Brown, pages 64 to 73.

The deposition of Thomas Dignan, pages 79 to 87.

The deposition of Nathan C. Pike, pages 94 to 101.

There was no evidence before the master showing any examination of the respondents' books for the years 1868 and 1869, save as to the amounts of fish purchased and sold green and preserved, and the cost and price for which they sold. As there was no dispute about these, the master does not report the testimony touching these accounts.
43 There was no proof touching the amount of space occupied and paid for by Robbins. The fact was not in dispute that he had game preserved in the respondents' room in the fruit-house and paid for it $600.

To the fifth objection: The above report and the testimony annexed is sufficiently full to enable the respondents to present their objection or take their exception to the court.

To the sixth objection: The master reports upon this objection that in the principal report he assumed as the guide in calculating the expenses of freezing and preserving fish for the years 1868 and 1869 the sums charged by the respondents as the expenses for freezing and pre-

serving fish for the years 1866 and 1867. Having rejected the account of expenses for the years 1868 and 1869 as rendered by the respondents, the master accepted the expenses of the two preceding years, the accuracy of which neither party had questioned as the standard.

To the seventh objection: The master finds that the business of each year stood by itself; was settled before another year's operations began, some months intervening between the close of the operations of one year before the operations of the succeeding year began; he therefore finds that as matter of law the losses of one year (if losses were incurred) should not be deducted from the profits of other years.

To the eighth objection: The schedule annexed, marked N, contains a copy of all the testimony bearing upon the transactions of the year 1870, and upon the alterations in the Charlestown apparatus, save so far as the same has been quoted in the original report.

To the ninth objection: The master annexes hereto, as by the respondents in said objection requested, a schedule, marked O, which contains a copy of the testimony bearing upon the gains made by the respondents upon the sales of green fish and the tables prepared by said Clapp.

To the tenth objection: The master reports that no claim was made at the hearing by the respondents for any allowance for interest on the amount of capital actually invested by them, and no allowance was made.

44 To the eleventh objection: No further report is demanded by this objection.

To the respondents' requests that the master should find certain specific facts, the master reports—

To the first request: The master finds that among the expenses charged by the respondents for the years 1866 and 1867, as incurred in operating their apparatus, there was not included any charge for interest on capital, or for labor of the regular employees of the respondents at their store, who did some of the work in operating the apparatus, nor for the labor of the respondents. The items that did make up the sum charged as expenses included rent to Gage & Company, but, whether rent for the land or not, was not questioned and did not appear. But it did appear that the respondents owned the Charlestown apparatus. After the proof was in, there was no controversy about the expenses of these years, and the same were accepted by the complainant and entered in the account by the master at the figures rendered by the respondents.

To the second request: The master reports that, save as hereinbefore reported, he denies this request.

To the third request: The master denies this request.

To the fourth request: The master reports that, save as before reported, he denies this request.

To the fifth request: The master reports that the capital employed in the purchase of fish by the respondents was, in 1866, $6,320.60; in 1867, $4,467.65; in 1868, $3,130.78; in 1869, $5,948.33, and in 1870, $4,565.78. That it took about five months' time to convert into cash the articles preserved. There was no request made at the hearing that the master should deal with any questions of interest.

The master annexes hereto Schedule P, containing copies of the entries of items of expense charged in respondents' books (the pass-books before named) for the years 1866, 1867, and 1870.

The master reports, at the request of the complainant's counsel, that at the hearing, the complainant's counsel in his argument insisted that the fish preserved by the respondents in 1870 were preserved in an ap-

paratus in which the described alterations did not exist, and by the use of the complainant's process.

45 The master also reports that the respondents introduced no witnesses at the hearing. The testimony came exclusively from witnesses called by the complainant, and from the record in the contempt case.

All of which is respectfully reported.

E. F. HODGES.

Master's fees.

$1150.	23	days hearing.
	12	" meeting and no hearing.
	19	" appointments and no meetings.
	15	" on reports.
	69	

SCHEDULE H.

Motion for leave to introduce further evidence as to the transactions of 1870.

The respondents now come before the master, and respectfully ask leave to introduce further testimony as to the use of the apparatus at Charlestown in the year 1870, for the following reasons, viz:

1st. Because they were informed and believed that the burden of proof was on the complainant to show that they had in fact infringed his patent by the use of his process, and that it was not upon them to show that they had not done so.

2d. Because the examination upon this subject led them to believe, and they did believe, that the only question raised in regard to the alterations in said apparatus was whether or not said alterations did in fact so change the process used by them as to take that process out of the complainant's patent.

3d. Because of a misapprehension as to what occurred at the
46 visit of the master to Charlestown. The respondent Seavey, on being inquired of there, stated, as he now recollects, and intended so to state, that the rooms were all alike, and had been used as altered, and in no other way, during the year 1870; that the alterations were made before they were used in that year, and so reported the interview to respondents' counsel.

And in support of the facts sought to be shown to the master, they submit the following affidavits, to wit:

The affidavits of Frank G. Oaks, jr., and John McLoud, and W. Seavey.

By their solicitor,

EDWARD AVERY.

SCHEDULE I.

Objections to master's report.

The respondents now come, before the filing of the report of Edward F. Hodges, esq., the master appointed by the court to take an account of the profits made by the respondents in the above-entitled cause, but after a draught thereof had been submitted to counsel, and file the following objections thereto:

First. That the master does not state the fact that the apparatus used at Charlestown was erected by the respondents.

Second. That in stating the expenses of the years 1866 and 1867 no charge was made of interest on the cost of erecting said apparatus, nor for the labor at that apparatus by employees of the respondents who were regularly in their service, but that only amounts paid to persons specially employed were so charged.

Third. That the master does not refer to the objection in writing filed by the respondents to taking the testimony relating to the use of the Charlestown apparatus in 1870, nor to the objection made to the specific questions on this subject, nor state his rulings so that the same can be revised or passed on by the court.

Fourth. The master does not state the fact nor refer to the testimony which showed conclusively that the respondents actually paid
47 for the use of the fruit-house at Cambridge the amounts paid by them, to wit, the sum of $3,500 for the year 1868, and the sum of $4,000 for the year 1869; the testimony on this point being as follows:

The entries of the monthly payments on respondents' books examined by Mr. Holmes.

The testimony of Mr. Seavey before the master and on pp. 19, 24, 25, 26, 30, 35, and 37 of the printed report in the process for contempt.

The testimony of Mr. Clapp before the master.

The testimony of Doolittle, pp. 58 and 63; printed report of James Brown, same, pp. 68, 71; of Dignan, same, pp. 82, 83; of N. C. Pike, same, pp. 94, 99.

And as bearing on the value of the space hired by the respondents during those years, the master omits to state that Nathan Robbins paid for a small portion of that space for a short period in 1869 the sum of $600.

The master states that no evidence was presented as to the details of the contract between the Fruit Preserving Company and the respondents, when in fact Mr. Seavey testified as to it, and the witnesses examined in the process for contempt testified to it, viz, Pike, Brown and Seavey; and the respondents, objecting to the findings of the master upon all matters in controversy relating to the years 1868 and 1869, pray that all the evidence, together with the objections taken by the respondents to the specific questions as noted by the master during the taking of the testimony, may be reported to the court.

Fifth. The respondents object to the disallowance of the two items charged by them for rent in 1868 and 1869, and say that the same, having been actually paid by them, are to be allowed, unless it be shown that the same was collusively paid and some portion thereof returned to them, directly or indirectly; and of showing this, burden is on the plaintiff.

Sixth. The respondents object to the amount of profits found by the master for the years 1868 and 1869, as being inconsistent with the facts before the master, and contrary to the rule of law regulating the ascertainment of profits in such cases.

48 Seventh. The respondents object to the findings of the master as to the disallowing of losses sustained by the respondents in the prosecution of their business, as being contrary to the rule of law in such cases.

Eighth. The repondents object to the findings as to the transactions of 1870 as being inconsistent with the facts stated in the testimony, and not in accordance with the rules of law applicable to the case.

The master overlooks the testimony of Harvey Waters, in which he

says, that when he visited the apparatus in December one of the rooms was in operation, having the openings and alterations directed by him.

And the respondents pray that all the evidence upon this subject may be reported to the court, with the several objections to the admissibility of the evidence as taken at the hearing, and the master's rulings thereon.

Ninth. The respondents object to the findings of the master as to the gains made on green fish, because the master states as a fact that which was only hypothetically stated by witnesses, and could only be reached by comparison of opinions, viz, the gain per pound on green fish sold, and because such finding is not sustained by the evidence; and the respondents pray that all the evidence upon which the finding was made may be reported to the court, with the several objections taken thereto before the master, and the master's rulings thereon, together with the tabular statement of the actual prices received for green fish by respondents, submitted by the witness Clapp; and further, the respondents object, because the master states the gain as though it were confined to the respondents, and not participated in by all other dealers in fresh salmon.

Tenth. And the respondents object to the master's findings because, in stating the costs and expenses of the business from which the alleged profits have arisen, he has not allowed the respondents interest on the amount of capital actually invested and employed in carrying on the same.

Eleventh. The respondents further object to the master's report, in that it is incorrect in the statement of profits, and the manner of
49 estimating them, and as to the cost and expenses properly to be allowed the respondents, as well upon the facts before the master as on the law.

SCHEDULE K.

The respondents in the above-entitled cause ask the master to find the following facts:

1st. In relation to the business of 1866 and 1867—

That the only charges embraced in the statement of expenses incurred in operating their apparatus were ice, salt, labor of persons specially employed from time to time at the apparatus, and some small items of nails, candles, &c., together with rent for the land on which the building stood; that the apparatus was built and owned by the respondents; that no charge in the estimate of costs was made for interest; that the men regularly employed by the respondents in their Boston store were also employed in the apparatus and in operating it, and that no charge was made in the item of expenses for their time nor labor.

2d. In relation to the business of 1868 and 1869—

That the respondents hired a certain space at the fruit-house in Cambridge, upon the agreement that they should pay for the first year $3,500 rent, and for the second year $4,000; that the employees of the fruit-house had the entire charge of operating the apparatus there, taking the articles sent by the respondents into their custody and charge, agreeing to return them to the respondents in good order and condition; that the Fruit-House Company furnished all the material and labor for operating the fruit-house apparatus; that the respondents actually paid to the Fruit-House Company the said sums of $3,500 and $4,000, and that no part thereof has ever been returned to the respondents by the Fruit-House Company, directly or indirectly.

That while the respondents were tenants at the fruit-house in 1869 they let a given space of their portion of the fruit-house to Nathan Robbins for a short time, and received therefor the sum of $600.

3d. As to the transactions of 1869—

50 They lost on the business carried on by them, of freezing and preserving salmon, the sum of $1,500, and are entitled to be allowed that deduction from the general profits received in other years.

4th. As to the transactions of 1870—

That the alterations in the Charlestown apparatus were made according to the directions of Harvey Waters, between the 20th and 25th of June, 1870.

That said alterations were made before any fish or other substances to be preserved were placed in said apparatus in the year 1870.

That the apparatus as altered was used in 1870 for freezing and preserving fish or other substances.

That it was not used in any other way during that year.

That by the use of said apparatus the respondents did not infringe the patent of the plaintiff nor practice the inventions described therein.

That the capital employed in this branch of respondents' business was as follows:

In 1866,
In 1867,
In 1868,
In 1869,
In 1870,

Employed solely in the purchase of fish, and that the average time taken to turn the stock, and for which interest should be calculated, was five months.

SCHEDULE L.

BOSTON, *July* 1, 1866.

Messrs. Brown & Seavey to Addison Gage & Co., Dr.

Rent from March 1 to July 1, at $300 per year $100.00
Received payment.

D. J. H. RICE,
per A. GAGE & CO.

[U. S. stamps.]

51 BOSTON, *May* 1, 1867.

Messrs. Brown, Seavey & Co. to Addison Gage & Co., Dr.

Rent of store-house from July 1, 1866, to March 1, 1867, at $300. $200 00
March 1, 1867, to May 1, 1867, at $400 ..... 66 67
Received payment.

ADDISON GAGE & CO.,
per R. W. HOPKINS.

[U. S. stamp.]

BOSTON, *January* 24, 1868.

Messrs. Brown, Seavey & Co. to Addison Gage & Co., Dr.

Rent of store-room from May 1 to Jan. 1, 1868, at $400 per year. $266 67
Received payment.

ADDISON GAGE & CO.,
per A. HARRINGTON,
Attorney.

[U. S. stamp.]

SCHEDULE M.

Mr. Clapp's testimony.

Exhibit E is pass-book for 1868 and 1869 for the fruit-house. Entries by me, and made as in Exhibit D from time to time. The pencil-mark on Exhibit E, page 4, called exp. 3,600, was made, I suppose, at the close of the season, when we footed up the operations. We figured it up, I believe, from vouchers. It is almost impossible for me to tell how we got it up. I think I made it up at the time from some vouchers, some papers we kept over there the best way we could. Don't remember whether anybody helped me; don't think any one did. At the
52 time I thought it right. No part of it was guessed at. This 3,600, as near as I recollect, was derived from adding actual entries and vouchers, actual expense. Don't know any other way to get at it. I figured it on a slip of paper that went into the waste-basket. Can't say where the vouchers, slips, or memo. are. Rent was about $3,500. Think they found most of the salt and ice for freezing-mixture. Know of no written contract about rent.

William Seavey's testimony.

I don't know as there was any writing with the fruit-companies. We sometimes do business of that amount in that way without writing. If I wanted to know I should have to ask the book-keeper, Clapp, or Rufus Lane. The rent was fixed for a year, whether we used the place or not. I was consulted about it, but think Mr. Brown closed it. The book, Exhibit E, shows we used the house about six months, but we paid for a year. For 1868 the rent was $3,500, and for 1869, $4,000.

(Counsel calls for the vouchers for the expenses for 1868 and 1869, to wit, for the $3,600 and $4,200, of which the above rent forms a part. Mr. Clapp is called on to produce these.)

Fruit-company found salt, ice, and labor. I think we paid insurance on the fish. * * * I don't know as any use was made of our space at the fruit-house when we did not use it. Think Fruit-House Company used our space some, but we paid rent.

Joseph H. McClure's testimony.

I reside at No. 9 Van Rensaelaer place, Boston. Been in the employ of Brown, Seavey & Co. about five years. Can't tell number of years. It was after I came from the war. Left a little over a year ago, and was drawn as a juror. Was with them about five years. Did what I was told to do. Carried fish to and from the fruit-house in Cambridge. The subpœna calls for books and documents. I have none to bring
53 All the papers I have are a few bills of Brown & Seavey's; all the rest I gave to the store at the time. I told Piper I kept an account and may be I had it now. But on looking I can't find anything. I told him I thought I had it, and if I had it was at mother's. Did not tell him I had it, and was surprised to find I had it. Haven't had it since I left Brown & Seavey. When I was with them I passed from time to time the papers in to Mr. Clapp. I spoke to Mr. Brown or Mr. Seavey after one of my conversations with Piper. Didn't speak on this subject or that I had been subpœnaed. Went to ask Brown & Seavey's counsel, and asked if I should answer the subpœna. Didn't see him. Other parties had stuff frozen in Brown and Seavey's rooms in fruit-

house, viz., Parker & Mills, such as birds and game. This was on my own account. I bought salmon of Brown & Seavey, and then froze it and took care of it for them. I sold them about one thousand at one time. Had no pay for keeping game for Parker & Mills except they paid me for salmon more than I paid Brown & Seavey, and the excess I kept. Robbins had game. Lawrence had game. Dunbar also. Brincome did not. Don't know H. A. Adams. Put in two barrels for a man in the market. Don't know his name. Dunbar, Lawrence made me presents; may be $5 in cash. Brown & Seavey got none of. Robbins never paid me any money; made me presents of game. Don't know that Robbins had any arrangement with Brown & Seavey. Know the others did not have any connection with Brown & Seavey. Know that Dunbar had no arrangement with Brown & Seavey. So Lawrence. Took no ice and salt there.

I had entire charge of the house as employee of Brown & Seavey, as their man. An Irishman, Tom, helped me some. Don't know as Brown & Seavey had any knowledge of this. Carried over best fish; hard work to freeze soft fish. Don't calculate to put salmon into the freezer until market is glutted. Kept a full and accurate account of fish to see all was right. Don't know that Brown & Seavey kept account. My account was sometimes on a card and sometimes on a book, (a pass-book.) Have not seen it since I left. All came out right save shrinkage. No one but Brown & Seavey had fish in Brown & Seavey's room. In the Charlestown house I put in birds for Dunbar and he paid
54 me, not Brown & Seavey. Also put in birds for Parker, and he paid me. In all, Parker paid me about fifty dollars. Robbins also had some, (4 or 5 barrels of game.) Robbins paid me, say six dollars, not Brown & Seavey. Brown & Seavey did not know it. In fruit-house, Robbins had from eight to twelve boxes. Brown & Seavey did not know. Robbins never paid money to me for Brown & Seavey, for use of either apparatus. Never paid Brown & Seavey, to my knowledge.

J. C. Nickerson's testimony.

A clerk for N. Robbins, in Faneuil Hall Market. Have been so for fourteen years or so. N. Robbins paid Brown & Seavey in January, 1870, for the use of the fruit-house in Cambridge, $600. This was for storage and caring for it, too. What we placed there was frozen when it went and was kept frozen while there. Don't know for how long a time this was paid, probably for three or four months in the year 1869. I made the bargain. We were to pay about so much per pound. We "kind o'" lumped it together. Don't know as we had any anywhere else with Brown & Seavey. Had some in the Charlestown house in 1870, and we were to pay so much per month for our room. I think it was twenty-five dollars per month. No payment has been made. Brown & Seavey never have called for pay.

55 (M.)

Deposition of William Seavey.

Int. 34. Since your firm stopped the use of your Charlestown apparatus, in pursuance of the notice given by Messrs. Parker & Clarke, as before mentioned, have you or either of you, or your employees, made any use of that apparatus for the purpose of freezing fish or other substances?

A. We have not.

Int. 35. Have you, or either of you, sold, since that time, any frozen fish or other articles which were not frozen or preserved in that Charlestown apparatus?

(Objected to by defendants' counsel.)

A. We have.

Int. 36. Have you any books or accounts showing such sales?

(Objected to by defendants' counsel.)

A. We have.

Int. 37. Were such fish and other articles frozen by your firm, or either of you, or by the direction or upon the order of you, or either of you?

(Objected to for form and substance by defendants' counsel.)

A. They were not.

Int. 38. How did you procure these frozen fish or other articles which you so sold?

(Objected to for form and substance by defendants' counsel.)

A. We bought them of several parties.

Int. 39. Name the parties.

(Objected to for form and substance by defendants' counsel.)

A. Some of Mr. Enoch Piper; some of Rogers, Stone & Co.; some of John Marston & Co.; of Middleton, Carman & Co.; of a man named Rogers; I could not tell his given name; he brings them on the Bangor boat; and we received some from Canada, from A. Frazier & Co.

Int. 40. Have you named all the persons from whom you have received frozen fish or other articles?

56 (Objection continued.)

A. There may be others; I could not say positive as to that.

Int. 41. If there may be others, will you reflect carefully and give us their names?

(Objection continued.)

A. If any one had a salmon on hand and we wanted one or two, why, we would go and get them.

Int. 42. Do you mean to say that, with the exception of the fish or other articles purchased from the parties you have thus named or referred to, you have not sold any frozen fish or other articles which were not frozen in your Charlestown apparatus previous to Messrs. Parker & Clarke's notice?

(Objection continued.)

A. I don't mean to say that we have not.

Int. 43. From what other parties, then, have you had frozen fish or other articles which were not frozen in the Charlestown apparatus prior to your stopping upon Messrs. Parker & Clarke's notice?

(Objection continued.)

A. We have had salmon stored in the fruit-preserving house on Cambridge bridge, and when we took them away they were frozen.

* * * * * * *

Int. 59. All those that were stored in the fruit-house and came out frozen, were so stored and so came out after last winter; is that so?

A. Yes, sir.

(Examination of this witness adjourned to the 12th, 15th, 17th, 19th, and 20th of November, severally; and on the said 20th of November the same was resumed.)

Int. 60. In your answer to the forty-third interrogatory you say "we have had salmon stored in the fruit-preserving house on Cambridge

bridge, and when we took them away they were frozen;" when was that?

(Objected to by defendants' counsel.)

A. This past season and the season before, say from the 1st of June to the 1st of August in each season.

Int. 61. How long were they kept there each year?

57 A. I could not give any precise date as to the time they were kept there; they were taken out from the 1st of August to the 1st of December.

Int. 62. Were not some of them last season kept in there later than the 1st of December?

A. There might have possibly been a very few. I would not say positively. There were very few, if any.

Int. 63. Have you any in there now?

A. We have.

Int. 64. How much weight, about?

A. I could not say positive, but not less than three hundred pounds, and not over six hundred pounds.

Int. 65. Have you any memorandum or account, or record of any sort, showing either the number, or the weight, or the cost, or the value, or the selling-price of the fish which you put in there last season or this season?

A. We have no record showing the minute particulars of all these facts inquired of or embraced in that question.

Int. 66. Question repeated.

A. We have an account of what we put in there separate from other things as to the number of the fish, but don't know the weight of them. We have no separate account as to the cost of the fish put there, nor can I give the value or selling-price, as they were sold at various times and for various prices.

Int. 67. What sort of fish were they?

A. Fresh salmon; and a year ago this season, a few fresh mackerel.

Int. 68. What have been their average weight, the salmon?

A. Fish put in from one source would average from ten and a half to eleven pounds each; those put in from another source would average about eighteen pounds each. I cannot say how many from each source at this time.

Int. 69. Can you tell hereafter; if so, how?

A. I can tell the exact number of each kind, as we have an account of the same.

Int. 70. What are the two sources you speak of?

58 A. The large fish referred to are those coming from Canada. The small ones principally from St. John.

Int. 71. State as nearly as you can the number and the average or aggregate weight of the mackerel which you had in there last season?

A. I would not be positive about it, but I should think four thousand fish, and possibly the same number of pounds.

Int. 72. Are you willing to produce the account showing the number of fish put in there this season and last?

A. I will answer after consulting with my counsel, and if so advised, will produce all at the same time.

Int. 73. Who is the proprietor of the fruit-house you speak of?

A. I believe it is an incorporated institution. I don't know who the stockholders are.

Int. 74. What is the name of the corporation?

A. I think it is the Massachusetts Fruit-Preserving Company, or some such name.

Int. 75. Are you, or is your partner, a stockholder in it?

A. We are not.

Int. 76. From whom did you get permission to store your fish in there?

A. Last year a man by the name of Doolittle had charge of it. This year I forget the man's name who had charge of it at the commencement of the season, and his health became poor, and in two or three months he resigned, and then it was under the care of a man named Pike. I don't know his given name.

Int. 77. Have you paid any storage on the fish you put in there?

A. We have; paid it every month.

Int. 78. And have the bills for it, I suppose?

A. We have.

Int. 79. Do the bills show the full names of the persons you have mentioned as in charge?

A. They do.

Int. 80. Is there an apparatus in that fruit-house adapted to freeze fish?

A. I don't know any other way than that we receive them from there frozen. That is the only way I know anything about it.

59 Int. 81. Do you mean that you have no knowledge or information as to the manner in which your fish have been frozen in them?

A. I have no knowledge of the manner in which our fish have been frozen. I don't know how they have been frozen, I am sure. I don't know by what process they have been frozen.

Int. 82. Have you never had any intimation from anybody as to the manner in which or the means by which they were frozen?

A. At the time that they were finishing the building there, I had a talk with Mr. Raymond, who was in charge at that time, and he informed me that they used some chemicals. I asked him if it would be expensive operating. He said he could not tell until they could find out whether they could boil the article over and use it again for freezing purposes.

Int. 83. When was that?

A. I think that was three years ago; about that time.

Int. 84. Before you put any fish in?

A. Yes, sir.

Int. 85. Have you any knowledge or information as to whether any alteration was made after you had this talk with Mr. Raymond, and before you put any fish in?

A. I have not. That was the only conversation I ever had with Mr. Raymond. We never done any business with him or with the company that season. I understood they operated some that season, and Rogers, Stone & Co. had salmon stored there that season.

Int. 86. That was the season before you put fish there, was it?

A. It was, sir.

Int. 87. Was not the apparatus, as it had been used for Rogers, Stone & Co., altered in some respects before or about the time that you began to store fish there?

A. Not to my knowledge.

Int. 88. Has there not been an alteration of that apparatus at any time within, say, three years past?

A. Not to my knowledge. I have never seen any apparatus at all there at no time.

Int. 89. Have you had any information of any alteration made in the apparatus within, say, three years?

60 A. I have not.

Int. 90. Did you have any knowledge or information as regards the construction of the apparatus which was there when you had your talk with Mr. Raymond?

A. I did not.

Int. 91. Did you know or have information at any time within three years last past that there was any freezing-apparatus there?

A. I knew that they froze articles there. I have never known what kind of an apparatus they did have.

Int. 92. You knew, if I understand you, before you put fish in there, that Rogers, Stone & Co. had had fish frozen there?

A. I did.

Int. 93. Do you know the names of any of the men who have worked there either this season or the last?

A. I do not, excepting Mr. Pike before mentioned.

Int. 94. Do you know whether any men who were formerly in your employment are now employed at that fruit-house?

A. I do not.

Int. 95. Do you know whether any such men have been employed there either this season or last?

A. Not that I know of.

Int. 96. Do you know Mr. Raymond's full name?

A. I do not.

Int. 97. Or Mr. Doolittle's?

A. I do not.

Int. 98. I understand you that you have paid storage-bills made out in the name of Mr. Doolittle; am I right?

A. I don't think that I said in the name of Mr. Doolittle; Mr. Leonard was treasurer last year, and I think the bills would show to be in his name; but I would not be positive about that.

Int. 99. Are you able now to give the full name, or the residence, or the place of business, other than the fruit-house itself, of any person who has been in charge of or connected with the operations at the fruit-house this season or the last?

A. I am not.

(Examination of this witness adjourned to Monday, November 22, at ten o'clock a. m.)

61 MONDAY, *November* 22.

Examination resumed.

Int. 100. Will you now produce a statement from your books showing the number of salmon frozen in your Charlestown apparatus in the year 1867, and showing the number of mackerel and small salmon stored by you in the fruit-house this season and the last?

(Counsel for defendants objects to the admissibility of the evidence proposed, and the witness, without waiving the objection, produces the Exhibit F, the objection being to the substance and not to the mode of proof.)

Int. 101. At what advance per pound over the cost have you sold the frozen fish mentioned in your account, just produced, as stored in the

Boston Fruit-Preserving Company's house? I mean on the average, as near as you can state.

(Counsel for defendants objects to the interrogatory.)

A. I could not give, with any degree of accuracy, as most of the fish are bought by the piece and paid for in gold; and what the rate of premium on gold has been at the time we made the payments I could not say. For these reasons I cannot tell exactly what they cost per pound, and they have not been sold at a uniform price.

Int. 102. You can tell from your books, can you not?

(Objection continued.)

A. We can tell what the cost was, but we could not tell the exact amount they were sold for, as at some times we might sell a party a case of the frozen kind, and another case received the same day that never had been frozen, and all be charged in one sum. In that case we could not distinguish.

Int. 103. Do not your entries of sales show whether the fish were frozen or not?

(Objection continued.)

A. They do not in all cases. Sometimes when we have sold nothing but frozen ones it would be shown; but at other times when we have sold part of each, as above stated, it would not.

Int. 104. How, then, do you know that the account produced here this morning, showing proceeds of sales of salmon frozen in your Charlestown apparatus after the injunction, is correct?

62 (Objection continued.)

A. Because, by arrangement made between counsel for the plaintiff and the defendants, it was a part of the agreement that we should keep a correct account of our doings with that apparatus at Charlestown, which we did do to the letter. Since that time we have not frozen any fish at all.

Int. 105. I believe I did not ask you what fish you had frozen. I am asking you how you keep your accounts. Do you mean that you keep your accounts differently since the termination of the agreement of counsel you speak of, from what you did under that agreement?

(Objection continued.)

A. I mean that we do keep them differently since we got through using that apparatus; as at the time we used the apparatus every lot of fish that we took from them was entered on our books as coming from them. In fact, we kept a regular debit and credit account with that apparatus.

Int. 106. Will you examine your books, or cause them to be examined, and make from them the most exact statement you can of the cost of the fish stored by you at the fruit-house, and the prices at which they have been sold?

A. Upon consulting with counsel, I will do this if so advised.

Int. 107. When you say that you "stored" fish in the fruit-house and that they "came out frozen," what do you mean?

(Objected to as to form and substance.)

A. I mean we carried them over there and delivered them to the company, and when we received them from them they were frozen.

Int. 108. These were your own fish that you so delivered, I understand?

(Objection continued.)

A. They were.

Int. 109. Delivered there in warm weather?

(Objection continued.)

A. They were.

Int. 110. I suppose, then, you had no idea in what condition they were going to come out? Is that so?

63 (Same objection continued.)

A. That is not so.

Int. 111. In what condition did you expect them to come out?

(Objection continued.)

A. In a frozen condition.

Int. 112. And you delivered them there for that purpose, didn't you?

(Objection continued.)

A. We did.

Int. 113. You say you paid "storage" on the fish you put into that house, and you also say that you have not frozen any fish since you stopped using the Charlestown apparatus; did you pay anything for having the fish frozen in the fruit-house, or is that what you call "storage?"

(Objection continued.)

A. That is what we call storage.

Int. 114. Will you produce here the bills for "storage" which you have paid on the fish delivered at the fruit-house?

(Objection continued.)

A. I will if advised by my counsel.

Int. 115. At what rate do you pay "storage?"

(Objection continued.)

A. I think it is three hundred and thirty-three dollars a month; I think that is the amount.

Int. 116. Without regard to the amount of fish "stored?"

(Objection continued.)

A. We cannot exceed the amount they can get into a certain space.

Int. 117. What space is that?

(Objection continued.)

A. I think the room or rooms are from thirty to forty feet long, and from ten to twelve feet wide.

Int. 118. Which is it, room or rooms?

(Objection continued.)

A. I don't know, for I have never seen them.

Int. 119. Who made the bargain for "storing" your fish there; you or Mr. Brown, your partner?

64 (Objection continued.)

A. We both had conversation together about it and with the agent.

Int. 120. Who was the agent?

(Objection continued.)

A. Last year Mr. Leonard was treasurer and Mr. Doolittle was acting agent outside; and this season I could not say what the man's name was who was first in charge there and that we made the agreement with; but he was not there but a short time, and when he left he came and introduced to us a man whose name was Pike, and I think N. C. was the initials of his given name, who would have charge of it.

Int. 121. Who was the agent with whom you and Mr. Brown, your partner, made the agreement for what you call "storage" at the fruit-house the first season; was it Mr. Leonard or Mr. Doolittle?

(Objection continued.)

A. Mr. Doolittle.

Int. 122. Was that agreement in writing?

(Objection continued.)

A. I am not positive; there was no writing when the agreement was made; whether there was any made afterward I am not sure.

Int. 123. Mr. Doolittle, then, at this time, made an agreement with you and your partner as to what was to be done with your fish, which you should deliver there, did he?

(Objection continued.)

A. He did not make any agreement as to what was to be done with them, anything more than that he was to receive them and deliver them to us, when called for, in good order.

Int. 124. That is to say frozen?

(Objection continued.)

A. I would not say whether the word frozen was mentioned or not, but think likely it might have been.

Int. 125. Some work was required to be done, was it not, to or with the fish to preserve them so as to deliver them to you frozen, months afterwards, and in good condition?

(Objection continued.)

65 A. I presume so.

Int. 126. What work should you suppose to be necessary to be done to preserve fish, and to deliver them thus frozen, in good order, months after they were put in?

(Objection continued.)

A. I could not say what would be necessary in that place, because I do not know how it was operated; but in our place at Charlestown we were obliged to charge our apparatus up in warm weather as often as twice a week; in cold weather, not as often.

Int. 127. I understand you to say that you agreed with Mr. Doolittle that, for the sum of three hundred and thirty-three dollars a month, he should receive fish to the amount of the capacity of the room you mentioned, and should keep them there and deliver them to you from time to time frozen; am I right?

(Objection continued.)

A. I think you misunderstood me.

Int. 128. In what respect?

(Objection continued.)

A. I said he was to receive them from us and deliver them to us in good order.

Int. 129. But you have said that you expected to receive them frozen, and think likely that the word frozen may have been used in your bargain with Mr. Doolittle. Do you mean to deny that the agreement was to freeze them, and to preserve them for you in a frozen state?

(Objection continued.)

A. I don't mean to deny but what they were to be preserved and delivered to us in good order, and we have reasons to suppose they would be frozen.

Int. 130. What reasons?

(Objection continued.)

A. Because the year previous they received salmon over there from Rogers, Stone & Co. in the same condition they recieved them from us, and we at various times saw them when Rogers & Stone brought them from there, and they were frozen, and we could see no reason why ours should not be in the same condition.

66 Int. 131. Did you make this bargain with Mr. Doolittle without knowing what work he had to do for the money?

(Objection continued.)

A. We did.

Int. 132. How came you to hit upon, or how did you get at that amount, three hundred and thirty-three dollars a month, if you had no idea what work he was to do for the money?

(Objection continued.)

A. We made that trade the same as we made many other trades, from the capacity of the room. If we had had a large supply of fish that season, it would have been at as little expense as we could have done it in our apparatus. That was the price he asked, and said he could not afford to do it any less.

Int. 133. Is this Mr. Doolittle's name, Oscar E. Doolittle?

(Objection continued.)

A. I don't know, but I think it is, from what I learn from one of our clerks this morning.

Int. 134. Have you learned the name of Mr. Leonard, or can you give it?

(Objection continued.)

A. George Leonard, jr.

Int. 135. Have you any idea where Mr. N. C. Pike can be found?

(Objection continued.)

A. I have not, unless at the fruit-preserving house, as I never saw him at any place but our office, and never heard any one say where he resided.

Int. 136. Do you suppose that Mr. Piper would be admitted if he went out to the fruit-house?

(Objection continued.)

A. I should suppose not, from what I saw when I was there. As I was in the front office, and over the door of the entrance into the main building there was a notice of "No admittance."

Int. 137. Have you been out there more than once since you have had fish "stored" there?

(Objection continued.)

A. I may have been out there three or four times, but very few indeed.

67 Int. 138. Did you never go into any part of the establishment but the outer office on any of those visits?

(Objection continued.)

A. I went through the hall that leads through the building to the back part.

Int. 139. You never went, then, into that part of the building where you supposed your fish were frozen and preserved?

(Objection continued.)

A. No, sir.

Int. 140. When were these visits of yours?

(Objection continued.)

A. I could not give any positive time, but I have not been there this season; the visits I referred to were some time last year.

Int. 141. So far as you are concerned, will you consent to Mr. Piper's admission to that part of the fruit-house where you suppose your fish are preserved, and give him a note to the proprietor to that effect?

(Objection continued.)

(Counsel for defendants suggests to the witness that he may consult counsel before answering this question.)

A. So far as I am concerned, I have nothing to say who they shall permit or exclude from their building, as we have no control over it whatever.

Int. 142. Are you or are you not willing to give Mr. Piper the note mentioned in the last interrogatory?

(Objection continued.)

A. I am not willing.

Int. 143. At the time you made your bargain with Mr. Doolittle, Rogers, Stone & Co. were also, or had been, in treaty with him or his company to keep fish in the same room, had they not?

(Objection continued.)

A. I could not say whether they had or not, for I don't know how many rooms they had.

Int. 144. Have you or did you ever have in your employment a man by the name of McCluer?

(Objection continued.)

68 A. Yes, sir.

Int. 145. What was his full name?

(Objection continued.)

A. His first name was Joseph; whether he has a middle name I can't say. And then we have another by the name of Cyrus McCluer; whether he has a middle name I can't say.

Int. 146. Have you or did you ever have in your employment a man by the name of Oakes?

(Objection continued.)

A. We have; his name is Frank G. Oakes, I think.

Int. 147. Are either of these three men in your employment now?

(Objection continued.)

A. They are; all of them.

Int. 152. Will you now produce the books or accounts or contracts for which you have been asked?

A. The account heretofore produced, and marked Exhibit F, is correct, and shows the number of salmon frozen at the Charlestown apparatus after the injunction had been dissolved by consent of counsel, the cost and sales price of the same. Also, the number of salmon and mackerel put into the fruit-preserving company's house in 1868 and 1869, together with the dates when they were first put in and when they were last taken out. I now produce a statement from our books, which is supplementary to account F, and is marked Exhibit (F*a* E. F. H.) I also produce two receipts for storage at the fruit-preserving house, signed N. C. Pike, treasurer, which are substantially like all our receipts for storage which receipts are marked Exhibit G and G*a* by the master. Since the last examination I have not been able to find any written contract with the fruit company under which they were stored at the fruit-house. If I can hereafter find any, they shall be produced.

Int. 153. Are the accounts which you have produced of fish stored by you in the fruit-house, with the price paid and received for the same, as accurate and exact as can be made from your books?

A. I presume they are. I told our clerk to draw off the account as accurately as he possibly could, and I presume he has done so.

Int. 154. Have you, since the service of the injunction, had any

69 fish frozen anywhere else except in your apparatus in Charlestown and in the fruit-house?

A. We have had some few fish, perhaps, frozen, but not to any great amount. It is quite frequent the case through the summer when we pack fish in common boxes and mingle salt and ice with them that some of them will be more or less frozen. Aside from such operations as these, we have not had any fish frozen.

Int. 155. Have you made more than one agreement with the fruit company?

A. We made an agreement with the fruit company when we first commenced storing over there. And after that compay gave it up, the man that was then put in charge by the persons who succeeded called on us and wished to know if we desired to continue, and we told him we did. That was the arrangement.

Int. 156. What was the name and address of this man?

A. As before stated, I don't know.

* * * * * * *

Cross-int. 9. Did your firm have any control over, directly or indirectly, *of* any part of the fruit-house at Cambridge, the working of any apparatus there, the manner of freezing therein, the way in which your articles were placed for freezing or after being frozen, or of any person having charge of the fruit-house or the apparatus therein, or the working of them?

A. We had no connection, directly or indirectly, and no control over it in any way or shape, and knew nothing of its workings, and nothing of the construction of the apparatus therein contained. We had no control over any of the employees in any way or shape.

Cross-int. 10. If I understand your statement of the agreement, it was substantially this: you were to deliver your goods at the fruit-house in good order and condition; they were to be received by the employees of the fruit-house, and to be disposed of as such employees deemed best, and were to be kept as long as you desired, and when called for were to be delivered to you in like good order and condition, you taking no risk of and to suffer no loss by reason of any deterioration or injury occurring while the goods were in the fruit-house, you being limited to a certain space not designated as located in any part of the house. Am I right?

70 A. That is correct. We had no more control over them than a man has who puts his goods into a government bonded warehouse.

Cross-int. 11. When did you first hear of the fruit-house in Cambridge, and that articles were being frozen there?

A. I could not state the exact time, but to the best of my memory, it was nearly four years ago. I am quite positive that three years ago Rogers, Stone & Co. had quite a lot of fish frozen there, and Mr. Piper was conversant with that fact.

Cross-int. 12. Did Mr. Piper ever say anything to you or in your presence about it?

A. He has talked with me about it several times.

Cross-int. 13. Did he say anything about it while Rogers, Stone & Co. were having their fish frozen there?

A. He had a talk with me about it at the time they had fish there.

Cross-int. 14. Did he refer to that fact at the time he thus talked with you?

A. He did refer to it in this way: he said he understood Rogers, Stone & Co. had a lot of fish over at the fruit-house frozen, and asked me, I think, at two or three different times, if I knew how many they had.

Cross-int. 15. Was this before you made the agreement with the Fruit-Preserving Company?

A. It was.

Cross-int. 16. After the injunction was served on you, you stopped using your apparatus at Charlestown at once, did you not?

Direct examination resumed:

Int. 3. When your fish came back to you from the fruit-house what was their appearace?

A. Their appearance was like all other frozen fish that I ever saw.

Int. 4. Were they separate?

A. They were.

Int. 5. Was there any ice on or around them?

A. I never saw any.

Int. 6. Were they coated with anything?

A. Not to my knowledge.

71 Int. 7. Were they packed in boxes at the fruit-house?

A. Sometimes we packed some in the back shed at the fruit-house when we were going to send them at once to the railroad; at other times they were brought to the store loose.

Int. 8. Who packed them?

A. We used to send our men over to get them, and carry boxes over in the wagon, and the fruit-house employees used to bring the fish out, and give them to our men, and they packed them, and carried them direct to the railroad, going to the destination where we wanted to ship them to, in order to save the time that we should use in bringing them to our store, and then pack them and carry them to the railroad.

Deposition of Oscar E. Doolittle.

O. E. DOOLITTLE, a witness called by the complainant, in answer to the underwritten interrogatories, replies respectively as follows, after being duly sworn:

NOVEMBER 24, 1869.

Int. 1. What is your name, age, residence, and occupation?

A. Oscar E. Doolittle; twenty-eight years; Boston; and clerk in the custom-house.

Int. 2. Were you formerly in the employment of the proprietors of the fruit-house in Cambridge? If so, from what to what time, as near as you can state, and in what capacity?

A. Strictly speaking, I was not. The facts are simply these: our company had hired the fruit-house of the owners, and I was employed by the persons hiring the house. I think it begun about the 1st of December, 1867, and ended about August, 1868. I was superintendent of the fruit-house.

Int. 3. Did you, while so employed, make an arrangement with Brown, Seavey & Co., for keeping their fish?

A. Yes; there was an arrangement made by which I should store their fish.

Int. 4. What was done to their fish while in the fruit-house, if anything, in pursuance of this arrangement?

72 A. I placed the fish in my preserving-room, in the same way that I placed poultry and meats.

Int. 5. Were Brown & Seavey's fish kept in one room, or more than one?

A. They were kept in one room, cut up into three apartments.

Int. 6. Will you please describe the arrangement of these three apartments, and what they contained?

A. As you entered the door there was a closet; turning to the right, and passing through another door, you entered the inner chamber, and to get into this inner chamber you passed through another chamber; so

that the closet, the second chamber, and the inner chamber, made the three chambers. They contained space. I decline to describe the apparatus unless ordered by the court. The reason I decline to answer that question is because whatever apparatus was contained in the room was my own invention, and I always considered it so, and I had not seen any of Mr. Piper's houses. I make this sentence to show why I considered the making these rooms a secret to myself.

(The counsel for plaintiff objects to this explanation of the reasons for this refusal, and proceeds with the examination, not waiving the right to compel an answer to the last interrogatory.)

Int. 7. Was the apparatus one for freezing and preserving fish and other substances?

(Objected to for form by defendants' counsel.)

A. I don't know hardly how to answer that question. It was an apparatus for preserving meats and poultry.

Int. 8. Was it not an apparatus for preserving fish also?

(Objection continued.)

A. Fish could be preserved in it.

Int. 9. Brown & Seavey's fish were preserved in it, weren't they?

(Objection continued.)

A. They were.

Int. 10. What do you mean by preserved? What was done to the fish, which you call preserving?

(Objection continued.)

A. Well, that is one of my secrets, and I decline to answer, as before.

73 Int. 11. The fish were brought there, I suppose, in a fresh state?

A. I think they were.

Int. 12. Didn't they leave there in a frozen state?

(Objected to for form by defendants' counsel.)

A. Not always.

Int. 13. Those that did leave there in a frozen state were put into and kept in that state until delivery by something, whatever it was, that was done to them in this room?

(Objection continued.)

A. I have frozen fish in the ice-house, which is entirely away from this room; also poultry and meats.

Int. 14. Question repeated.

A. Am I obliged to answer that question? (Upon consideration the witness answers to this question:) Yes, sir.

Int. 15. For the purpose of freezing and preserving fish in this room, did you use a freezing-mixture?

A. Yes, sir.

Int. 16. What was it?

A. That I decline to answer, as before.

Int. 17. Did it contain salt and ice?

(Defendants' counsel objected as to form.)

A. I decline to answer that, the same as before.

Int. 18. You obtained no patent on the process or apparatus used in this room, did you?

A. No, sir; I have not, but have thought of doing so.

Int. 19. You have no connection now with the parties who are using this apparatus?

(Objected to as to form.)

A. No, sir.

Int. 20. Did you sell your secret to them when you left?

A. No, sir.

Int. 21. Have you attended this examination in obedience to a subpœna?

A. Yes, sir.

Int. 22. When was it served?

A. Day before yesterday, about five or six o'clock in the afternoon.

74 Int. 23. Have you seen Mr. Brown and Mr. Seavey since that time?

A. No, sir.

Int. 24. Or any agent or messenger of theirs?

A. I think I met their book-keeper in the custom-house. I did do so.

Int. 25. He came there to see you, didn't he?

(Objected to for form by defendants' counsel.)

A. I do not know.

Int. 26. When was that?

A. Yesterday afternoon.

Int. 27. What was his name?

A. I never knew that.

Int. 28. How did you know he was their book-keeper?

A. Simply by having seen him in their office in times past.

Int. 29. At this meeting yesterday afternoon did he bring you any message from Brown, Seavey & Co.?

A. I don't remember anything of that kind.

Int. 30. What was the subject of your conversation?

A. Part of it was in relation to the custom-house business, and I asked him about this case, and he went with me to Mr. Avery's office, but did not see Mr. Avery.

(Answer objected to by defendants' counsel as irrelevant.)

Int. 31. Did he propose that you should go to Mr. Avery's office?

A. I think not; I think I suggested it for my own information.

Int. 32. What information did you want?

A. I could not recall the parties interested in this suit fully.

Int. 33. What did you want to know that for?

A. For no particular reason, except for my own information.

Int. 34. Did you get an interview with Mr. Avery at all from the time the subpœna was served until the time your examination commenced this morning?

A. Yes, sir.

Int. 35. When?

A. Last evening.

Int. 36. Was anybody present beside you and him?

75 A. No, sir.

Int. 37. Where was it?

A. In Mr. Avery's office.

Int. 38. Who built the apparatus which you used for freezing and preserving Brown & Seavey's fish?

A. I don't recollect.

Int. 39. Don't you recollect the name of any person who did any work about that apparatus?

A. I can't at this moment recall the name of any of them.

Int. 40. Do you know where the place of business of any of them was or is?

A. I think in Cambridge or Cambridgeport.

Int. 41. Are there any bills for that work?

A. I have never seen any.

Int. 42. On whose account was the work done; your own, or that of your employers?

A. On account of my employers.

Int. 43. And who were they?

A. The Boston Fruit-Preserving Company.

Int. 44. Where are the books and papers of that company?

A. I do not know.

Int. 45. Where do you suppose them to be?

A. I have no idea.

Int. 46. Does that company still do business at the fruit-house?

A. I do not know; but think not.

Int. 47. Why do you think not?

(Objected to as to form.)

A. Because when I left them the property passed from their hands into that of the proprietors of the building.

Int. 48. And who were they?

A. At that time the Massachusetts Fruit-Preserving Company.

Int. 49. Are they the proprietors now, do you know?

A. I presume they are; but I do not know positively.

Int. 50. Can you give the name of any person who was an officer of the Boston Fruit-Preserving Company while you were employed as superintendent?

76 A. C. M. Hovey was president. I think a gentlemen by the name of Dewing as a director. That is all I recall.

Int. 51. Can you give the name of the person who was employed to attend to the apparatus in which Brown & Seavey's fish are put and preserved?

A. I can't recall his name.

Int. 52. Have you any means of ascertaining his name or the name of any parties who had anything to do with the building of the apparatus?

A. I do not know of any means by which I could find out now.

Int. 53. Before contriving the apparatus had you visited the works of the defendants, Brown, Seavey & Co., at Charlestown?

A. It is so long ago that I can't recall whether I did or not.

Int. 54. Can you recall whether you ever visited those works?

A. I think I did once.

Int. 55. Don't you think that was before the apparatus that you got up at the fruit-house was completed?

(Objected to as to form.)

A. My impression is that it was some time afterwards.

Int. 56. What was the occasion of your visiting it when you did?

A. Simply curiosity; a desire to gain information if I could.

Int. 57. Have you objection to describe the apparatus, if any, for freezing and preserving fish that was used in the fruit-house before your apparatus was built?

A. I have no objection, but do not now remember how it was built.

* * * * * * *

Int. 102. What was the size of the rooms?

A. I can't give the exact dimensions; but say twenty feet long and ten feet wide.

Int. 103. Were all the rooms of the same size? If not, how large was the other?

A. One was a little larger than the other. From one room a small closet was partitioned off, with one or two pipes.

Int. 104. Did Brown & Seavey hire one room or more, if any?
(Objected to, as it assumes a fact not in evidence.)

A. I don't recollect now.

77 Int. 105. How much space were they entitled to fill with their fish?

A. I don't recollect. I did not know anything about that.

Int. 106. To whom did Brown & Seavey make payments while you were there?

A. The treasurer would give me the bills, and I would present them for payment, and sometimes the treasurer would collect them himself.

Int. 107. Can you produce any of these bills; or, if not, will you state how they ran, as nearly as you can?

(Defendants' counsel objects, because no call has been made on defendants to produce the bills, the witness not being the custodian of them, and not entitled to speak of them; no foundation has been made for this proof.)

A. Not having made them out, I have no recollection of anything about them, and I cannot produce them.

Int. 108. Please describe the freezing-apparatus that was in the fruit-house before you constructed your apparatus.

A. Not having seen it but few times, I have no recollection anything about it, and it was a good while ago.

Int. 109. Do you mean to say that you are absolutely unable to give any description of that apparatus?

A. I do, that would be intelligible.

Int. 110. How long after your employment at the fruit-house commenced that you constructed your apparatus?

A. I don't remember, but I think it was several months.

Int. 111. Did the first apparatus have the receiving-pan at the top to receive the freezing-mixture?

A. I don't remember certainly, but I think it did.

Int. 112. Did it have perpendicular tubes connected with the receiving-pan, and running down through the preserving-chamber?

A. I think it had two or three, but they had been abandoned before I was employed, I think.

Int. 113. How was it used during your employment?

A. I had but little to do with it, if anything, and my impression is that there was some kind of a box inside by which they froze fish and other substances.

78 Int. 114. State as nearly as you can how many fish Brown & Seavey had frozen in your apparatus during your employment.

A. Oh, I have no idea anything about it.

Int. 115. When you left the employment of the fruit-preserving company, what arrangement or agreement, if any, was made as to the use of your apparatus or to the preservation of your secret?

A. I do not know how they now conduct the apparatus, nor did I ever know. My secret is a secret still. I did not that I know of communicate the secret to any one. I never owned the apparatus, nor did I build it. I simply superintended the building.

Int. 116. Was salt and ice used in the first apparatus as a freezing-mixture?

A. My impression is that they were used.

Int. 117. Can you give the name of any person employed at the fruit-house while you were there or subsequent? If so, please do it.

A. I don't remember the name of any one, it is so long ago, but I would if I could.

Int. 118. When you left there did you leave the pots as they were in the apparatus?

A. I don't certainly recollect, but think I did.

Int. 119. Did not the employees of the company have access to the freezing-apparatus which you constructed?

A. No, sir. Only one man, whose duty it was to take charge of it with my assistance. I don't recollect his name, but would give it if I could. One, I now remember, was called Tom; his other name I don't know. I discharged him and got another.

(Examination adjourned to December 8, at 10 o'clock a. m.)

Int. 134. Did you ever see any member of the house of Brown, Seavey & Co., or any of their employees, in this apparatus, or looking at it, or did you ever hear of their having been there or having seen it?

(Question objected to by defendants' counsel as, among other ground, calling for hearsay testimony.)

A. I have no recollection now of having seen them there, or any of them. And I have no recollection of ever hearing of any of them being there, or having seen it.

79 Int. 135. Could they have seen or examined the apparatus, had they cared so to do, so far as the regulations of the fruit-house concerning persons who had acquired by purchase the right to use the apparatus for freezing purposes were concerned?

(Objected to as assuming a fact of which there is no evidence, namely, that the defendants had acquired a right by purchase to use the apparatus; also upon other grounds.)

A. The regulations of the fruit-house were that no person besides the employees should enter the fruit-house, except accompanied by one of the employees; even then none were allowed to enter the freezing-room, or fish-room, or whatever it is called.

Int. 136. How much space could Brown, Seavey & Co. occupy in this freezing-room under their contract? I mean to ask you to make as near an estimate as you can.

(Objected to as having been once before substantially answered.)

A. I have no recollection anything about it at all.

Int. 137. Do you know who made the bargain with Brown, Seavey & Co., and how did you first hear that such a bargain had been made?

A. I have no recollection anything about it.

Int. 138. You were informed in some way, were you not, that Brown, Seavey & Co. had the right to occupy a certain portion of the freezing-room?

A. I presume I was.

Int. 139. When did you last see the freezing-apparatus you have described?

A. It was two or three years ago; when I left there.

Int. 140. Do you know, or have you heard, whether any alteration has been made in that apparatus since you left there? And, if any, what?

A. I do not know anything about it, and have never heard a thing about it one way or another.

(Examination adjourned to December 10, at 10 a. m.)

80 DECEMBER 9.

Examination of witness, Doolittle, resumed pursuant to adjournment.

Int. 141. How were the fish or other articles to be preserved placed in the freezing-chamber?

A. Sometimes on racks along the side room and sometimes in heaps on the floor.

Cross-examination by Edward Avery, esq., counsel for respondents:

Cross-int. 1. Who employed you and the other persons employed in and about the fruit-house?

A. The Boston Fruit-Preserving Company.

Cross-int. 2. Was there any person at work in or about the fruit-house who was paid or employed by the defendants, Brown, Seavey & Co.?

(Objected to by complainant's counsel.)

A. Not during my superintendency.

Cross-int. 3. Did not the Fruit-Preserving Company have the entire control and management of all the rooms in their house during your superintendence, so far as known to you?

(Objected to by complainant's counsel.)

A. Yes, sir.

Cross-int. 4. The fish or other articles belonging to Brown, Seavey & Co., or put into the house by them, were delivered by them or their agents to the employees of the fruit-house and by those employees put into the freezing-chamber in such way as those employees deemed best and most convenient to them, were they not?

(Objected to for form and substance by complainant's counsel.)

A. Yes, sir.

Cross-int. 5. The materials used in making freezing-mixtures, and the manner in which they were used, were matters over which you, as the superintendent, had entire control, were they not?

(Objected to for form and substance by complainant's counsel.)

A. Yes, sir; subject to the orders of the Fruit-Preserving Company.

81 Cross-int. 6. Did the defendants, Brown, Seavey & Co., furnish any of the materials so used?

(Objected to by complainant's counsel.)

A. Not during my connection with the fruit-house.

Cross-int. 7. Did they have any control over or give any directions as to the manner in which such materials should be used?

A. No, sir.

Cross-int. 8. The manner in which the fish and other articles received from the defendants were frozen or preserved was under the entire control of yourself as superintendent, subject to the order of the Fruit-Preserving Company, was it not?

A. Yes, sir.

Cross-int. 9. Generally the articles sent by the defendants were received by the employees of the Fruit-Preserving Company in their yard or at the door of the house, were they not?

A. Yes, sir.

Cross-int. 10. And afterward placed in such room or rooms as you, as superintendent, should direct; was that so?

A. Yes, sir.

Cross-int. 11. You also directed how they should be placed in the room, did you not?

A. Yes, sir.

Cross-int. 12. If I understand rightly, the Fruit-Preserving Company received any articles—fruits, vegetables, meats, or fish—for preservation and storage, did it not?

A. Yes, sir.

Cross-int. 13. That was, in fact, the purpose for which it was intended, was it not?

A. Yes, sir.

Cross-int. 14. Were all the rooms lighted from the exterior?

A. None of them were.

Cross-int. 15. When in operation the rooms were always kept dark, were they not?

A. Yes, sir.

Cross-int. 16. When the articles were taken from the fruit-house by the defendants they were generally delivered by the employees of
82 the fruit-house to the defendants either at the door of the house or in yard, were they not?

A. As well as I can recollect now, they were.

(All the foregoing interrogatories, both direct and cross, were objected to by the counsel for the respondents and the complainant respectively, both for form and substance, as the same were propounded; and the objections are now open.)

O. E. DOOLITTLE.

Deposition of James Brown.

JAS. BROWN, called by the complainant and sworn, answered to the interrogatories severally as follows:

Int. 19. You have frozen fish, or had fish frozen, since you stopped using the Charlestown apparatus, have you not?

A. We have frozen fish since then.

Int. 20. When and how?

A. We have frozen them in sugar-boxes, with salt and ice, in our store, in Boston.

Int. 21. Have you not frozen, or had frozen, fish at any other place, or in any other way, than as you have stated in your answer to the last interrogatory; if so, when and how?

A. We have had them stored, and when we received them they were frozen. They were stored in the fruit-preserving house in Cambridge.

Int. 22. Were they sent there in a fresh state?

A. They was.

Int. 23. Were they sent there to be frozen?

A. They were sent there to be preserved.

Int. 24. Question repeated.

A. They were sent there to be frozen or preserved.

Int. 25. How were they frozen?

A. I don't know.

Int. 26. Have you no idea how fish which you sent to the fruit-house to be frozen or preserved were, in fact, frozen or preserved?
83 A. I have not.

Int. 27. Have you never inquired?

A. Not to my recollection.

Int. 28. Do you know whether you have ever inquired or not?

A. I don't recollect that I ever have.

Int. 29. Have you purposely refrained from inquiring?

A. I have not.

Int. 30. When did you first begin to send fish to the fruit-house to be frozen, and how long did you continue to do so?

A. I think we began in 1868, and I don't recollect how long we continued.

Int. 31. State, as nearly as you can, the last time you sent fish to the fruit-preserving house to be frozen.

A. I think July, 1869.

Int. 32. Have you any fish in the fruit-house now?

A. I can't say whether there is or not.

Int. 33. When does your contract with the fruit-house end, if you have one?

A. I can't tell, because I don't keep that business as my part.

Int. 34. You still have the right to send articles to the fruit-house to be frozen, have you not?

A. We have a right to send them to be stored, I think.

Int. 35. Do you mean by stored frozen or preserved?

A. We expect when we send fish there that when we receive them they will be frozen.

Int. 36. Have you now any articles stored in the fruit-house for the purpose of freezing or preserving?

A. If we have any there we expect they will be preserved or frozen. I don't know whether we have anything there or not.

Int. 37. Did you, or any of your firm, make a contract with the fruit company as to preserving or freezing articles in their house? If so, was it in writing or verbal? and if in writing, will you produce it?

A. We made a contract with them to store our fish, or whatever articles we might put in; it was verbal, and I don't know whether it was reduced to writing or not; if in writing, I will produce it.

84 Int. 38. Was there any length of time specified in the agreement with the fruit company during which you were to send articles there? if so, how long were you to have that right?

A. I don't recollect if any time was fixed nor what it is.

Int. 39. Who made the agreement with the fruit company?

A. I think Mr. Seavey and I both talked with them about it.

Int. 40. With whom did you make the agreement?

A. I think we talked with Mr. Doolittle, and with Mr. Leonard, I think it was.

Int. 41. What is Mr. Leonard's full name and what is his address?

A. I do not know.

Int. 42. What position did he hold in the company?

A. I don't know.

Int. 43. Have you ever renewed your old or made a new contract with the present company? If so, with whom?

A. We have. I don't know the name of the man. He did not stay but little while; was taken sick and left.

Int. 44. What office did he hold in the company?

A. I don't know.

Int. 45. Can you give the name of any of the officers of the company at the time when you made the original or renewed your contract with them?

A. I cannot.

Int. 46. What was the contract?

A. The contract was, they should take what fish and anything we want to deliver in good order, store them, and deliver them to us in good order; that is as near as I can recollect.

Int. 47. Have you made any payments to the company under this agreement? If so, to whom?

A. I presume we have; I do not know to whom.

Int. 48. Who has made the payments?

A. I think our clerks have made the payments.

Int. 49. Will you give the names of your clerks and their respective duties?

A. Rufus Lane, George Clapp. They do all the business that is to be done in the office.

85 Int. 50. Who acts, or has acted, since you made the contract with the fruit company, as your book-keeper, and who as your cashier?

A. Rufus Lane, as both.

Int. 51. Have any receipts been given for the money so paid to the fruit company? If so, will you produce them?

A. I presume receipts have been given; if there have been any we will produce them.

Int. 52. When the agreement was made with the fruit company, was there, or has there since been, any understanding or conversation between any member of your firm, or employee of yours, and any person connected with the fruit company, in regard to the manner in which the articles sent by you to the fruit-house were to be frozen or preserved?

A. Not to my knowledge.

Int. 53. Did you, when the agreement with the fruit company was made, know of any method or process by which fresh fish could be preserved for a long time, so as to be sweet and in a good saleable condition, except by freezing them in a chamber by means of a freezing-mixture having practically no communication with the air of the freezing-chamber?

A. I supposed there was another method, but I did not know.

Int. 54. What do you mean by saying you supposed there was, but did not know? Had you ever heard of one?

A. I knew that they had froze over at the fruit-house one year before.

Int. 55. How did that make you suppose that there was another mode than the mode described?

A. Because a man in the market-house told me that a man came from the fruit-house, took a fish from his stall, carried it to the fruit-house, froze it, brought it back in about four hours.

Int. 56. What did you suppose this other method to be?

A. I supposed it to be some chemical.

Int. 57. How did you suppose the chemical was to be used?

A. That I did not know.

Int. 58. All that you can say then is, if I understand you rightly, that you supposed, when you made the agreement with the fruit com-

86 pany, that there was a method of freezing fish different from the one inquired of—the difference consisting in the use of a chemical as or in a freezing-mixture?

A. I believe that is so.

* * * * * * *

Int. 63. Can you state, or will you produce books of account which will show, how many frozen fish you have sold, either directly or by your agents, here or elsewhere, since the eleventh day of June, 1867, the date of the service of the injunction?

A. I think the books will not show exactly, and I cannot state.

Int. 64. Will you produce your books of account and let them speak for themselves?

A. I will.

Int. 65. Can you make an estimate of the number of frozen fish so sold?

A. I could not now.

Int. 66. Can you state how many pounds of fish you have had frozen in the fruit-house? If not, will you produce books that will show it?

A. I can't state it; I will produce books that will show the number of fish, but not the number of pounds.

Int 67. Will you produce books that will show the price paid and the price received for such fish?

A. If my counsel so advises, and our books will show it, I will produce them.

Int. 68. Will you produce the books and let them speak for themselves?

A. If my counsel so advises, I will.

Int. 69. Can you give the name of any person or persons employed at the fruit-house at any time since you made your agreement with the company? If you can, please do so.

A. There was Mr. Doolittle, and a man named Pike—I don't know his given name or residence.

The examination of this witness was adjourned to Friday, December 10, at 10 o'clock a. m.

87 DECEMBER 10.

The examination of JAMES BROWN resumed by E. Avery, esq., counsel for the respondents in cross-examination.

Cross-examination:

Cross-int. 1. Did the firm of Brown, Seavey & Co. have any person in their employment or under their pay at the fruit-house in Cambridge at any time after you commenced sending articles there?

A. Not to my knowledge.

Cross-int. 2. Did they furnish or supply, directly or indirectly, any substances used in the freezing-mixture made use of at the fruit-house, so far as you know?

A. Not to my knowledge.

Cross-int. 3. Did your firm by themselves, or any one in their employment, have any charge of or control over the fruit-house, or any part of it, or of the manner in which the articles were stored therein?

A. Not to my knowledge.

(The witness, upon conference with counsel, says that the books, accounts, and contracts called for in the direct examination will, so far as possible, be produced by his partner, Mr. Seavey, upon the renewal of his examination.)

Direct examination resumed:

Int. 1. Have you, or any member of your house, or any of your employees, ever visited the fruit-house; if so, for what purpose?

(Specially objected to as not competent at this stage of the examination.)

A. I have visited it to see if they would store fish. As to the others, they have been there to deliver and take away articles, but whether they ever went in I don't know.

Int. 2. Will you give the names of those of your employees who have been to the fruit-house for any purpose?

A. Joseph McLuer, of Boston, and I think Franklin Oakes, of Boston.

Int. 3. Have any of your employees ever done any work at the
88 fruit-house of any kind beside simply delivering and receiving articles?

A. Not to my knowledge.

Int. 4. Have they ever been instructed either as to what they were or were not to do at the fruit-house?

A. They were instructed to deliver the fish and go out with the fish.

Int. 5. Have they ever been instructed in regard to entering the freezing-apparatus at the fruit-house which you have a right to use?

A. Not to my knowledge.

Int. 6. Have they ever been instructed as to assisting the employees of the fruit-house in taking fish into and out of the freezing-apparatus?

A. Not to my knowledge.

Int. 7. Have you ever had fish carted to the fruit-house or taken away from there by truckmen not in your regular employ?

A. We have had them taken there by the truckman who does our regular trucking. I don't know of any being taken away but by our own teams.

Int. 8. Give the name or names of the truckman or truckmen.

A. Chase & Woodsum and Joseph McLuer.

Int. 9. You also employed, did you not, a man named Pearce?

A. Not to my knowledge.

Int. 10. Did not a man named Pearce cart your fish out to the fruit-house and bring them back?

A. Not to my knowledge.

Int. 11. Do you know the name of the truckman sent by Chase & Woodsum to cart your fish to and from the fruit-house?

A. I do not.

Int. 12. Did you ever, when you had fish carted out there by Chase & Woodsum, or their employees, send out your own employees to assist them in unloading and storing the fish, or in taking them out of the fruit-house and loading them?

A. We have sent them out there to assist them in unloading and delivering to the fruit company.

Int. 13. Whom have you so sent?

89 A. I think Joseph McLuer and Franklin Oakes.

(All the foregoing interrogatories, both direct, redirect, and cross, were objected to by the counsel for the respondents and the complainant respectively, both for form and substance, as the same were propounded; and especially the counsel for the complainant objected to the cross-interogatories as informing the witness of the answer desired; and the counsel for the respondents objected especially to the redirect interrogatories as not being competent at that stage of the examination; and all these objections are now open.)

JAMES BROWN

Deposition of Thomas Dignan.

THOMAS DIGNAN, a witness produced by the complainant and sworn upon the holy evangely, in answer to interrogatories as severally propounded, replied as follows:

DECEMBER 17TH.

Int. 1. What is your name, age, residence, and occupation?

A. My name is Thomas Dignan; my age is about twenty-nine; my residence is Cambridgeport, and my occupation is that of laborer.

Int. 2. Are you employed at the Boston Fruit-Preserving House?

A. Yes, sir.

Int. 3. How long have worked there?

A. About three years next March, and take about three months out.

Int. 4. Do you mean you will have worked there three years next March, but have been absent three months?

A. Yes, sir; about three months.

Int. 5. What are your duties at the fruit-house?

A. Taking in fruit and things to be stored. I am hired by the company.

Int. 6. Did you ever see there a freezing-apparatus constructed under Mr. Doolittle's direction?

A. Yes, sir.

90 Int. 7. Is that apparatus there still?

A. Yes, sir.

Int. 8. Has any alteration been made in it since it was first constructed?

A. No, sir.

Int. 9. For what purpose is it used?

A. For freezing.

Int. 10. For freezing what?

A. Fish, currants, and things like that.

Int. 11. Whose fish are frozen there?

A. I could not tell.

Int. 12. How long has the apparatus been used for freezing fish?

A. About two years.

Int. 13. When was it constructed?

A. I could not tell what time of the year; some time, I think, in summer.

Int. 14. Do you know the name of any parties for whom fish have been frozen there?

A. I couldn't swear to whom they did belong.

Int. 15. Did you ever hear of the firm of Brown, Seavey & Co.?

A. Yes, sir.

Int. 16. Did they ever have fish frozen there?

A. I wouldn't swear, sir.

Int. 17. Did they ever hire the right to have fish frozen in that apparatus?

A. I don't know the agreements, sir; I only work for so much a week.

Int. 18. State what you do know about Brown, Seavey & Co.'s relations with the fruit-house.

A. I know nothing about them, only I see their teams coming there.

Int. 19. What was brought in their teams?

A. They bring poultry and sweet-breads and game, &c.

Int. 20. Have they ever brought or do they bring fish?

A. They have brought, but they don't bring any now.

Int. 21. When did they last bring fish?

91 A. To or from? Which?

Int. 22. To.

A. Some time in September last, I guess, or August; I can't say which.

Int. 23. Have Brown & Seavey any fish there now?

A. There ain't no fish in now.

Int. 24. When did their teams last take away fish from there?

A. A man came and took away some last week.

Int. 25. Have they anything there now; if yea, what?

A. There are some sweet-breads in; I don't know who they belong to.

Int. 26. Anything else; if so, what is it?

A. A few small boxes of poultry and game.

Int. 27. How much poultry, game, sweet-bread, and other articles beside fish, have Brown, Seavey & Co. had frozen in that apparatus?

A. I couldn't swear they had anything belonging to them frozen.

Int. 28. Who brought out the fish and other articles with Brown & Seavey's teams?

A. They did not come in Brown & Seavey's teams, some of them. I don't remember to have seen fish brought out with Brown & Seavey's teams. A man they call McLuer brought out those articles that came in Brown & Seavey's team.

Int. 29. What did Brown & Seavey's teams do there?

A. They did not do anything until they would go again.

Int. 30. What were they there for, if they did not do anything?

A. They had to wait until their teamsters would be ready to go with them.

Int. 31. What did their teamsters do then?

A. They used to be getting ready some poultry and game, &c., to take away with them.

Int. 32. What do you mean by getting ready?

A. Putting them in boxes, &c.

Int. 33. Did they ever take away any fish?

A. Yes, sir.

Int. 34. Who put the fish and other articles into, and who took them out of, the freezing-apparatus?

92 A. I used to take them out sometimes. Messrs. Brown & Seavey's men put them in sometimes, and sometimes I did.

Int. 35. Did you ever see Mr. Brown or Mr. Seavey out there?

A. I see Mr. Brown once in the office. I never see Mr. Seavey. I wouldn't know as I would know the man.

Int. 36. Did you ever see Mr. Brown anywhere about the fruit-house, except in the office?

A. No, sir.

Int. 37. Do you know Jonas Hallstrom?

A. No, sir.

Int. 38. When you didn't take the fish and other articles for Brown & Seavey out of the freezer, who did?

A. A man by the name of McLuer.

Int. 39. How were the fish packed to be taken away, and where was it done?

A. They were put in boxes, and it was done in the ouside entry of the fruit-house.

Int. 40. You have said that you don't think you ever saw Brown & Seavey's teams bring fish there. Who did bring the fish?

A. I could not swear who did own the team.

Int. 41. Did Brown & Seavey's men come with them, ever?

A. Men used to come there before them sometimes and sometimes after. McLuer was one and Thomas Nolan another.

Int. 42. At whatever time these men came there, they were there at the same time with the teamster who brought the fish, were they not?

A. Yes, sir.

Int. 43. Are McLuer and Nolan the only men from Brown & Seavey's who used to go out there?

A. There were two more men. One was Silas or Cy McLuer, and the other was Frank Oakes. There were two men named McLuer.

Int. 44. Did any of these men beside the McLuer first named assist

in putting fish or other articles into or taking them out of the freezing-apparatus?

A. Yes, sir. All did who came.

93 Int. 45. Who had charge of the freezing-apparatus last spring and summer?

A. Mr. Whitmore. I. B. Whitmore, I think it is.

Int. 46. Who worked about it, or on it?

A. Thomas Dignan, this witness.

Int. 47. Who else?

A. Nobody but me.

Int. 48. Did Brown, Seavey & Co.'s men do anything else except assist in putting in and taking out articles from the freezer?

A. No, sir.

Int. 49. Who charged up the freezer?

A. I did.

Int. 50. Did anybody help you; if so, who was it?

A. No, sir.

Int. 51. Did any of Brown, Seavey & Co.'s men ever go up into the loft over the freezer?

A. Yes, sir. They went up into the ice-loft.

Int. 52. What did they do there?

A. Used not to do anything but look around and go down again.

Int. 53. How often used they to go up there?

A. I could not swear. They used not to come over very often; when they did come, perhaps they would go up and come down again.

Int. 54. Did you alone grind up all the ice required to charge up the apparatus?

A. Yes, sir; excepting what assistance the superintendent gave me.

Int. 55. Were Brown, Seavey & Co.'s men ever up in the loft when you were charging up the apparatus?

A. They might happen to come up at the same time I was chopping up the ice.

Int. 56. Did they ever help you?

A. No, sir.

Int. 57. Were the fish, after they were frozen, ever coated with gum or with ice or with frozen cloth?

A. No, sir.

94 Int. 58. Was nothing done to the fish at the fruit-house after they were frozen except to pack them up and send them away?

A. Nothing except to pile them up in the freezing-room.

Int. 59. Was anything done to them while they were being frozen?

A. No, sir.

* * * * * * *

Int. 71. Have you ever been told to keep secret the fact that Brown, Seavey & Co. were having fish frozen at the fruit-house?

A. I was told to let no strangers in. I have been told to keep secret the fact that Brown, Seavey & Co. were having fish frozen there.

Int. 72. Who told you?

A. Mr. Doolittle.

Int. 73. Did anybody else ever tell you?

A. No, sir, not that I could swear to.

Int. 74. To the best of your recollection, did anybody else ever tell you so?

A. No, sir, not that I know, sir—not that I remember.

Int. 75. Have you, since the subpœna was served upon you, received

any instructions from anybody as to whether you should attend or not, or as to what your evidence should be?

A. No, sir.

Int. 76. Have you had any conversation with anybody about it?

A. No, sir, except what Mr. Avery asked me.

Int. 77. What was that?

A. Did I ever see Mr. Brown in the freezing-apartment?

Int. 78. What was your answer to that question?

A. I told him no, sir; I had never seen him there. I had seen him in the counting-room or office.

Int. 79. Was that all you told Mr. Avery?

A. I told him I could not swear that the fish belonged to Mr. Brown.

Int. 80. Have you ever had any conversation with Mr. Brown or Mr. Seavey in regard to the freezing-apparatus at the fruit-house?

A. No, sir.

95 Int. 81. Have you ever had any conversation with either of them about freezing their fish at the fruit-house?

A. No, sir.

Int. 82. Do you know anybody else who belongs to their firm except Mr. Brown?

A. No, sir.

Int. 83. Did you ever have any conversation with any of their clerks about the freezer or freezing their fish there?

A. No, sir.

Int. 84. What was the freezer charged up with?

A. With ice and salt, sir, and some bittern sometimes.

* * * * * * *

Cross-examination:

Cross-int. 1. Did Mr. Doolittle ever tell you not to mention to any one the fact that Brown & Seavey had fish frozen there?

A. Yes, sir.

Cross-int. 2. When?

A. I can't swear what time, sir.

Cross-int. 3. When the fish were first received at the fruit-house, you usually took them and put them into the freezer, didn't you?

A. Yes, sir.

Cross-int. 4. The men who assisted you brought them to the door of or into the freezer, and generally left them for you to put up, did they not?

A. We used to help each other along till we got the job done, so as to get it done as quick as possible.

Cross-int. 5. You usually told them in what part of the room to put them, didn't you?

A. The most convenient place to get them out of the way.

Cross-int. 6. And you helped each other in taking them out, too, in order to have the room open as little as possible?

A. Yes, sir.

Direct examination resumed:

Int. 1. How long did it usually take to put the fish into and take them out of the freezer?

96 A. That was according to what quantity we had.

Int. 2. How large were the doors of the freezer?

A. I couldn't swear; I should think about three feet by six.

Int. 3. Did you have to use a candle or light of any kind in putting in and taking out the fish?

A. Sometimes a lamp and more times lanterns.

Examination adjourned to Monday, December 20, at 10 o'clock a. m. All objections reserved by counsel.

THOMAS DIGNAN.

* * * * * * *

Deposition of Nathan C. Pike.

NATHAN C. PIKE, a witness called by the complainant, in answer to the following interrogatories, respectively, after being duly sworn, says:

Int. 1. What is your name, age, residence, and occupation?

A. Nathan C. Pike; thirty-nine; West Newton; and I am treasurer and superintendent of the Massachusetts Fruit-Preserving Company.

Int. 2. How long have you occupied this position of superintendent?

A. From the 10th of last May.

Int. 3. Have you, during that time, had any dealings with any member of the firm of Brown, Seavey & Co., of Boston? If yea, what?

A. I have. I have received money from them for storing goods.

Int. 4. What goods?

A. Fish and poultry.

Int. 5. Have Brown, Seavey & Co., within that time, had fish frozen at the fruit-house?

A. I suppose they were their fish. The fish were frozen.

Int. 6. Have you made or renewed any contract with them for the freezing of fish and other articles?

97 A. No, sir.

Int. 7. Have you made or renewed any contract with them for the Fruit-Preserving Company?

A. No, sir.

Int. 8. How large a space can they occupy at the fruit-house for storing or freezing fish and other articles?

A. I could not say how large they were by measurement; but I should judge the space to be two rooms about twelve feet square—perhaps not quite so long.

Int. 9. Is there any contract subsisting between the fruit company and Brown, Seavey & Co.? If so, is it in writing, or is it a verbal agreement?

A. There is a writing, I believe, to that effect.

Int. 10. Where is it?

A. I think I have one at my house, at West Newton.

Int. 11. Will you produce it, to be made an exhibit in this case?

A. If I am obliged to I shall do it; but otherwise I should not be willing to do so.

Int. 12. Why are you unwilling to produce it?

A. The reason is, I don't know whether the company would be willing that I should.

Int. 13. Will you produce it and allow a copy to be made of it by the master?

A. If I have orders to do so, I should be willing.

Int. 14. Have you ever been told to keep the agreement secret?

A. No, sir.

Int. 15. Have you ever seen any member of the firm of Brown, Seavey & Co. at the fruit-house?

A. No, sir; not that I know of.

Int. 16. Have you ever had any conversation with any member of that firm on the subject of their contract with the fruit company?

A. No, sir; not that I remember.

Int. 17. Is there at the fruit-house a freezing apparatus constructed by Mr. Doolittle?

A. There is an apparatus there that will freeze things. I don't know who it was constructed by.

98 Int. 18. Was it there when you went there?

A. It was.

Int. 19. Please describe it generally.

A. There are pans overhead; the ice comes down from the ice-loft overhead into them, and then some pipes that run from these pans down through the freezing-rooms. The rooms are all lined with galvanized sheet-iron. There are horizontal iron pipes put in at the bottom of the upright pipes to carry off the waste. They carry water into a main waste-pipe.

Int. 20. How are the walls of the freezing-room constructed?

A. They are constructed of galvanized sheet-iron.

Int. 21. What is outside of these walls?

A. There is no covering outside; it is in contact with, or forms, the wall of the fruit-room. This sheet-iron makes all the partitions between the fruit-rooms in the building.

Int. 22. How are the external walls of the fruit-house constructed?

A. They are constructed of sheet-iron, nailed on to the frame of the building.

Int. 23. Are the walls constructed so as to contain non-conducting substance?

A. I expect they are; I could not say for certainty, because I never examined them.

Int. 24. Does the book now handed you contain a correct description of the construction of the fruit-house?

A. I should think it did.

Int. 25. How many fish and how much poultry have Brown, Seavey & Co. had frozen at the fruit-house while you have been there, as nearly as you can tell?

A. I can't tell anything about it; I might estimate how much we had in there. We have not frozen much poultry for any one since I have been there. Perhaps I have received twenty-five hundred, and may be three thousand salmon from Brown, Seavey & Co. Perhaps I have frozen a ton of poultry and game for them.

Int. 26. Have all these articles been frozen in the apparatus you have described?

A. Yes, sir; unless some of the poultry was frozen before it was put in; I think some of it was.

99 Int. 27. Where does the main drain-pipe, of which you have spoken, end?

A. It ends at the further end of the building, under the floor somewhere; I don't know exactly, but it carries the water through the floor.

Int. 28. Are the short drain-pipes from the bottom of each of the tubes curved or straight?

A. Straight.

Int. 29. Has any alteration been made in this apparatus since you have been there?

A. No, sir. In one of the rooms we have put in a little larger pipes.

Int. 30. As at present constructed, then, the main drain-pipe does not run down the center of the freezing-chamber?

A. No, sir; it does not. The main drain-pipe of the building runs down the passage-way, between the fruit-rooms, and finally passes down

through the floor, as above stated. Into this, other drain-pipes empty as follows: In one of the freezing-rooms a pipe passes through the middle, receiving smaller pipes from the upright tubes; this pipe passes into the main drain-pipe. In the other freezing-room the pipe runs around the room and receives the short pipes from the upright tubes; this also empties into the said main drain-pipe.

Int. 31. Have Brown, Seavey & Co. any fish now in the freezing-room?

A. No, sir; they have not.

Int. 32. Have they anything there; if so, what?

A. There is something there that was sent there by them; some quail, and I think some woodcock.

Int. 33. Have you, or has any one connected with the fruit-house, to your knowledge, ever had any conversation with Brown, Seavey & Co. as to freezing or preserving the articles sent there by them, or as to the method by which they were frozen or preserved?

A. I think not.

Int. 34. Do you know?

A. I know they never asked me how they were frozen or the method; they might have asked me how things were getting along over there, but nothing more.

Int. 35. Have you, or has anybody to your knowledge, ever communicated to them the method of freezing their fish and other articles at the fruit-house, or any part of it, in any way?

A. No, sir.

Int. 36. How long a time has the contract with them yet to run?

A. I think till the 1st of May next.

Int. 37. When was it made?

A. I could not say when it was made.

Int. 38. State, as nearly as you can, the substance of that contract.

A. I was to receive whatever goods they saw fit to send there, as many as I could store in their two rooms, and deliver them in good condition. That is as I can remember the substance.

Int. 39. Is anything said in the contract about freezing the articles?

A. I could not say whether there was or not, for certainty.

Int. 40. What do you think?

A. I don't know; there may be something to that effect—I can't say—and there may not. I think perhaps there might have been in the paper something to that effect; something about freezing.

Int. 41. Is anybody else, if you know, interested in this contract beside Brown, Seavey & Co.?

A. There is no one else except the fruit company.

Int. 42. Has any one else had any articles frozen or preserved in this apparatus since you have been there; if so, who?

A. Yes, sir. Mr. Dunbar, Mr. Brimecombe, and Mr. Lawrence.

Int. 43. Have Shattuck & Jones ever had anything frozen there?

A. No, sir; not that I know of.

Int. 44. What freezing-mixture do you use in this apparatus?

A. Ice and salt; that is all.

Int. 45. Have you ever used anything else?

A. No, sir. I did once put a little bittern on, but never but once.

Int. 46. What is bittern?

A. It is something manufactured from salt.

Int. 47. When did you last see any member of the firm of Brown, Seavey & Co.?

101 A. The last time I had any conversation with them was December 1st.

Int. 48. Have you received any message from them, or either of them, within a week?

A. No, sir.

Int. 49. When you last saw Mr. Seavey, did you have any conversation with him about this suit?

A. I think not.

Int. 50. Did you ever have any conversation with him about this suit; if so, what was it?

A. Yes, I suppose I have. You may call it that, but nothing to amount to anything. It was merely I would ask him how he was getting along, and he asked me who the head men or managers of the fruit-house were.

Cross-examination:

Cross-int. 1. Had Brown, Seavey & Company any control over any substances delivered at the fruit-house from the time of their delivery until they were redelivered to them?

A. No, sir.

Cross-int. 2. The method of freezing and of keeping them frozen was entirely under your control and direction, was it not?

A. It was.

Cross-int. 3. The defendants delivered to you such articles as they chose; you received them, treated them after your own method and as was most convenient to you, and upon demand delivered them to the defendants. Is that so?

A. It is so.

Cross-int. 4. The defendants had the right to put in articles sufficient to fill two rooms in the house. Is that so?

A. It is.

Cross-int. 5. And for the storage of such articles they paid a certain rate per month, did they?

A. They did.

Cross-int. 6. So far as you know, did they know the method of your treatment of the articles after you received them?

A. They did not.

102 Cross-int. 7. It is a part of the business of the fruit company to receive articles on storage, such as fruit, vegetables, meats, poultry, game, and fish from any persons who chose to send them, is it not?

A. It is.

Cross-int. 8. And the articles so received on storage are preserved in chambers, the temperature of which is reduced sufficiently by the use of freezing-mixture to preserve them in good condition. Is that so?

A. That is so.

Cross-int. 9. The temperature of the different rooms being adapted to the articles to be preserved, is it?

A. Yes, sir.

Cross-int. 10. If it becomes requisite to freeze the articles thus stored, in order to preserve them, they are so frozen by you without special orders to that effect from the parties storing them, are they not?

A. They are.

Cross-int. 11. When articles are received you use your own judgment and determine for yourself the manner in which they are to be preserved, do you not?

A. I do, unless parties send particular word, which they do not always do.

Cross-int. 12. Will you explain what you mean by "particular word"—to what it applies?

A. For instance, if a person sends a box of poultry there and does not send any word, I should use my judgment how to take care of it. So of figs, or anything else. If they did send word, I should comply with it if it was so I could.

Direct examination resumed:

Int. 1. Is there any difference between the freezing-apparatus and the fruit-rooms you have described?

A. These fruit-rooms have no waste-pipes and no upright tubes.

Int. 2. Were the defendants' fish put into the fruit-rooms or the freezing-apparatus?

A. The freezing-apparatus.

103 Int. 3. Were they ever put into the fruit-rooms?

A. Not to my knowledge.

Int. 4. And the fish were frozen in the freezing-room, were they not?

A. They were.

Int. 5. Did you then understand that the defendants' fish were to be put into the freezing-room when received, and kept there frozen till called for?

A. Why, of course, I understood that anything of that kind that came there I should put into the freezing-room, as that was the proper place to preserve them for any length of time.

Int. 6. Then you understood that these fish were to be frozen in the freezing-room, did you not?

A. Certainly.

Int. 7. Did you ever have any instructions as to that?

A. No, sir.

Int. 8. Did you ever have any direction or information as to what wa to be done to those fish?

A. No, sir; no more than I should as to anything of that nature sent in that way.

Int. 9. Would fish ever be proper articles to be placed in the same room with fruit?

A. I don't know why they would not be proper.

Int. 10 Were other articles besides these you have mentioned have been frozen or preserved in the space alotted to the defendants; and if so, what? I do not mean to imply that any definite space was allotted to them, but supposing the space they were entitled to fill to be empty, and the rest of the freezing-room to be filled.

A. Yes, sir. If the defendants had not filled their space, and the rest of the rooms were occupied, I should put any proper thing that came into the space until the defendants required it. The articles thus put in were poultry, game, and sweet-breads.

Int. 11. Was any localised space allotted to the defendants in the freezing-rooms?

A. They were entitled to all the two freezing-rooms I have described. I think some articles of the defendants other than fish were

104 sometimes put into other rooms, but I cannot say for certainty.

(The book identified by the witness in his answer to the twenty-fourth interrogatory is, by consent, put in as an exhibit, and it is marked Exhibit M, E. F. H.)

(All objections reserved to counsel on both sides to the questions and answers.)

NATHAN C. PIKE.

SCHEDULE N.

Hervey Waters' testimony.

Taken December 22d, 1870, at 2 p. m.

On or about the 20th June, 1870, I was requested by Mr. Avery to go to Charlestown with Mr. Seavey and give directions as to alterations in the freezing apparatus, which alterations should be, in my judgment, sufficient to constitute an actual communication, for practical purposes in freezing fish, between the chamber in which the fish were placed and the chamber or pans and pipes in which the freezing-mixture was placed. I did so, and directed that cuts should be made on two sides of the pans in which the freezing-mixture was put, each of which cuts should be from six to seven feet long and about three inches wide, producing two openings of that size between the chamber in which the freezing-mixture should be placed and the chamber in which the fish should be placed, in each of the four rooms in the Charlestown apparatus, which openings would amount to between two and three square feet of area in each of the rooms. On Saturday last I visited the same apparatus again at Mr. Avery's request, and found the cuts made substantially as I had directed.

Q. When you visited the apparatus last Saturday was it in use freezing or preserving fish?

A. One of the rooms, I think the second one from the south end, was in use.

105 Q. What is the cubic measure of the interior of the chamber in which the fish are placed, excluding the area of the pipes and pan?

A. I can't answer with any considerable degree of accuracy, because I have not measured, but I should think about 865 cubic feet.

Cross-examination:

The contents of the pan I consider to be forty-nine cubic feet, the upright pipes fifty-six cubic feet, and the horizontal pipes thirty cubic feet. I deduct the sum of this from the contents of the chamber, which I think to be 1,000 cubic feet, and thus I arrive at the 865 feet as the contents of the chamber, exclusive of the pipes and pan.

Redirect:

Q. What are the practical purposes for which you understand the communication to be an actual one?

A. The idea I meant to convey by that is such an opening as would for all practical purposes destroy the close chamber in which the fish was placed. If there is any value in having such a close chamber, beyond the convenience of charging the pan with the freezing-mixture, it is to prevent the outer atmosphere from getting into the chamber where the fish are, when the pans are open for the purpose of charging the same with salt and ice. Now, in this apparatus, with these cuts as I have described them, where the cover is taken from the pan for the purpose of charging it, there is an opening from the chamber in which the fish are to the chamber in which the freezing-mixture is, and also out into the open atmosphere, of the dimensions which I have described substantially. This, in my judgment, is all the practical effect that is important in this process as connected with the question. As far as I have investigated this subject, it has appeared to me that, as a process, it is substantially the same whether the openings are there or not. So I do not mean to be understood that I think the openings are necessary

to the process, beyond the mere matter of convenience in charging and preventing the entrance of the atmosphere to the fish when renewing the charges with the freezing-mixture. So that my understanding was
106 and is, in directing these cuts according to the directions of counsel, that with the cuts the chamber in which the fish were placed was no longer a close chamber, as relates to that in which the freezing-mixture was placed, the cuts amounting to actual openings between the two for the purposes of this apparatus.

Q. Do you know how large the openings would have to be in order to admit the outer atmosphere to the fish when the freezing-mixture chamber was open, in order to charge it to such an extent as to impair the preserving of the fish?

(Objected to by defendants' counsel.)

A. I do not; but I believe that an opening of two or three square feet might impair it somewhat. I don't believe that an opening of twenty feet would impair it much. I believe that opening the chamber for the purpose of taking out fish, or any other purpose, whether you open between the freezing-mixture and the fish or not, so long as the fish-chamber was open out to the atmosphere, would deteriorate the fish, though it would not deteriorate the freezing of the fish substantially, because admitting the oxygen of the atmosphere with the atmosphere to the fish would have a tendency to rust them; but I do not believe that the opening, whatever the size of it may be, between the fish and the freezing-mixture, is of any vital importance in freezing or preserving fish in this way. I believe this apparatus would work just as well with two or three feet of opening, and I believe it would work just as well if there were forty feet of opening between the freezing-mixtures and the fish.

Mr. Clapp's testimony.—Recalled.

(Produces a book, Exhibit C, showing receipts and deliveries of salmon from Charlestown ice-house for 1870.)

I notice some errors in carrying out items, which I wish to correct; otherwise this book is correct.

This book was made from memo. on cards or slips as the men brought them in. This identical book was made at the time the articles were received and delivered, and thus made up from time
107 to time. Sometimes the carrying out may have been postponed an hour or so, but the initials of the parties, dates, and weights were put down at the time.

The book as it stands (except the footings) has been in existence since its date. It was kept in the safe, generally. I made a point generally to enter the items as they came in, but sometimes the memo. would lay an hour or so in the book. These items will appear in the journal. There is no blotter. Everything appears on the journal except the cash sales; those do not appear anywhere. The cash was put in the drawer and at night counted and entered in one item. In the journal there is no mention whether the salmon are frozen or fresh, and no way of telling except when the fresh salmon were not in market.

On this book J. L. H. means J. L. Huntress of Centre Harbor.

I think there has been no fish delivered from that freezer since 19th December, 1870. That closed out all the fish. No fish kept there but salmon that year, (August 4 and December 19, 1870,) so far as I know. I kept no account of any other than salmon.

The names of the men employed and who brought me the memo. from

which entries were made are Frank Oakes, John & George Nickerson, Thomas Nolan, Cambridge or East Cambridge.

Don't know as anything kept in the freezer since December 19, 1870. I don't personally know about the freezer in to keep the account. Talking over matters at store I learned there had been formerly other fish, (bass, &c.,) kept, but there was no account. There was mackerel kept there at fruit-house, not at Charlestown freezer.

(From the testimony of W'm Seavey, August 21, 1871.)

Q. Who did the work of making the alterations which Mr. Waters directed to be made last summer in the Charlestown apparatus?

(Objected to.)

A. John McCluer, of Charlestown, was the boss mechanic; he lives on Main street.

Q. What was the cost of your freezing apparatus at Charlestown? What was the annual expense of maintaining and using?

(To above queries no reply is recorded.)

108 I think we let some people use our apparatus at Charlestown in the last winter and spring. Nathan Robbins put in poultry. He paid for it; can't say how much; think the books will show.

SCHEDULE O.

Further testimony of Mr. Seavey.

Q. What advantage was it to you in your business to put fresh fish into the preserving apparatus as you did in the years 1866 and 1867, and keep them there for the periods of time that you did, instead of putting them upon the market upon their arrival and while they remained fresh?

(Objected to.)

A. It was to have a supply after the catch was over for that season.

Q. Was it not also an advantage to avoid depressing the selling price of fish by putting more upon the market at any given time than it (the market) would bear?

(Objected to.)

A. There have been times when we put fish in that proved advantageous to us by keeping up the price in the market at the time, but there have been other times when we had better have sold them fresh than to have put them in; that is, the expense of keeping them so long was such that we had better have sold them right off.

Q. Irrespective of the cost of keeping the fish, was it not always one effect of putting them in and keeping them there that, to the extent of the fish so kept from the market, the market was relieved and the price kept up?

(Objected to.)

A. It was not.

Q. Was it not generally the effect?

(Objected to.)

A. I cannot tell whether it was generally the effect or not.

109 Q. Was it sometimes the effect?

A. I think it was. But there have been times, for instance when we have had but a small lot of fish come, and we could have sold them at full market price, but we proposed to put more of them in the preserving-house.

Q. With the exception of cases such as you have just mentioned, was

it not the effect of keeping the fish from the market to relieve the market to that extent, and so keep the price from declining?

A. It is impossible for me to define it any other way than this: that there have been times when we have had quite a large stock, and thought that there might not be an immediate demand for the whole of them, and we have put part of them into the freezer, but it finally proved that before we received any more that we should have disposed of all of them at full prices, and in fact we have sometimes taken them from the house after we took them over before putting them into the freezer and sold them in the market.

Q. What made you prefer to keep fish in the freezing or preserving apparatus when you could have sold them fresh at full price?

A. That we might have some for our customers after the catch for the season was over. Sometimes we got a higher price, and sometimes a little lower. They averaged about the same, I should think, as if sold fresh and unfrozen. We like to have such articles as our customers call for, and for this reason we froze those. . . . Between June 21 and July 10, for the years 1868, 1869, and 1870, we sell about as we freeze, but the sales, I should think, would exceed in amount what we froze. I can't say how much the sales exceed the freezing.

Testimony of Gilson Carman.

I live in New York, and of the firm of Middleton, Carman & Co. We have received frozen salmon from Piper ever since 1860. We have not had for three or four years any exclusive contract with [them] for frozen fish. I don't know that we have ever had any contract. Last year I bought on condition that I should have the exclusive right; not so this year. We have dealt in frozen and fresh salmon since 1860. We are the largest retail concern in the New York market. We use a freezer under a license from Piper, and preserve salmon he forwards to us. I have known the respondents for ten or twelve years, and have a general knowledge of the way they conduct their business.

Q. State from your knowledge as a fish-dealer, accustomed to use in your business a freezing apparatus for the purpose of preserving salmon, in what way a dealer in salmon is benefited by having a freezing apparatus in which he can put salmon and preserve them in marketable condition any desired length of time.

(Objected to as to form and substance.)

A. We are benefited in this way: we can make contracts on better conditions by taking all a man's catch, I suppose.

Q. Does the use of a freezer, as above mentioned, have any effect (I do not now ask as to how much) as to the price of salmon sold fresh during the same time by the same parties?

(Objection—the form, leading, and for substance.)

A. Yes; it takes out the surplus salmon off the market and enables the holder to get a better price for the remainder.

Q. Will you explain how the use of such a freezer enables a man to make better contracts for taking all a man's catch, and what is the advantage of taking all a man's catch?

(Objection.)

A. He has a place to put them if he has more than the market demands. You can get it cheaper by taking all a man's catch.

Q. Supposing the fish-market to be in its ordinary condition, and that a dealer receives during the season of the salmon catch 70,000 pounds

of salmon, and that he puts 25,000 pounds of them into a freezer and keeps them there as long as is desirable, will you state what, in your judgment, is a moderate estimate of the gain per pound in the selling price on the whole 70,000 pounds over the price he would get if he had to put the whole 70,000 pounds onto the market as fast as they arrived, or within, say, one week afterwards?

(Objection.)

Q. It is a hard matter to get at definitely, but I should say from two to three cents per pound.

111 Q. Suppose such dealer's whole receipts of salmon during the season of the catch to be 100,000 pounds, and he puts into his freezer and keeps as long as desired one-quarter of the amount, would the gain in price on the whole 100,000 pounds by his so doing be, in your judgment, about the same as before stated, or more, or less?

(Objection.)

A. The gain would be rather more.

Q. Why?

A. No; it would not be quite so much, because the proportion laid aside would be less.

Q. You stated, under the supposition of 70,000 pounds received in all and 25,000 pounds put in the freezer, that the gain in price on the whole 70,000 would be at a moderate estimate from two to three cents a pound. What do you understand by a moderate estimate; and state what you believe the gain in price would really be?

A. Three cents a pound, as near as I can get at it.

Q. Which is the more profitable, as a general rule, in the case of what are called soft fish, to put them into the freezer or to let them take their chance with the green fish not put in the freezer?

(Objection.)

A. It is a hard question. It would depend upon how soft they were. If they were sweet it would pay better to freeze them than to dispose of them unfrozen; if not sweet, I should throw them overboard.

Cross-examination:

I get my knowledge of the general way Brown & Seavey conducted their business by being in the same business for a number of years. I don't know of any other way. I have been on here considerable, and seen them conduct their business. Have been on often, every year, for two [or] three days at a time. They did not tell me how they did it. I never saw their books; nor did they tell me whether they sold for

112 cash or on credit. I know something of it because I dealt with them. They did not tell me generally how they did their business. All my knowledge is that I am in the same business, have done business with them, and have been in and out often. I think I did business with them in 1869, or with their agent, Mr. Halstrom, in New York. I have done business with them more or less for eight or ten years, up to 1870. I do not altogether mean to say that if I deal with a man for some years it gives me a general knowledge of the way he conducts his business. I have bought for and with them, and sold to them, and in some degree known how they do; have been connected with them in some transaction in fish, (this does not refer to the year 1869.) Had no such transactions in the year 1869; think it was in 1864, 1865, and 1866, two or three years. We purchased fish together on joint account, sharing profit and loss in these years; we did not render to them account of fish sold in New York. I was down East, and bought fish on joint account

and divided here; expenses were divided. This for two years, for 1860 and 1861, as near as I can recollect. After that, another man went down and purchased for all, and expenses divided. Have no recollection of any joint transaction since 1865. Have contracted in Halifax to take the entire catch of several fishermen before 1865, and before we had a freezer.

I don't think since 1865 we have made a contract with any person to take his entire catch. Last June and July we had a contract for 2,000 pounds of salmon per week from Newcastle, New Brunswick, and some from different dealers on Commercial wharf, Boston, and we bought some from Faneuil-Hall market. The above 2,000 pounds' contract was the only standing contact we had in 1871. Don't know as we had any contract in 1870, but bought from dealers in Faneuil-Hall market; same in 1869, but may have had a few contracted for in S't John; in 1868, I cannot recollect about; in 1867, the same. I don't think we have handled 70,000 pounds of salmon any year since 1865; we have frozen a few fresh salmon, with permission of Mr. Piper, in 1863, 1864, 1865, and 1866. I don't think we have had at any time over 3,000 of our own freezing, it might be 4,000; this was in the fall of 1865 or 1866. Since then we have frozen small quantities, not over 500 pounds (and probably
113 less) in any one year. We never withdrew in June and July over 500 pounds from the market in any one year; the 3,000 was in the fall, (November or December.) From 1865 to 1870 (June and July) did not know parties freeze salmon for preserving in New York as a business, nor know any one to withdraw from the market more than we did, 500 pounds.

Re-examination:

Have contracted for the entire catch of some parties for a period, not for a season. Racy, of Centre market, has bought fish to freeze; I don't think to lay in a supply for any length of time, but just to keep for a week or so. We have had a freezer on our premises to keep fish frozen, by Mr. Piper, in the British provinces. This would hold 8,000 to 12,000 pounds, and sometimes it has been full. We have in the years 1865 and 1869 bought fresh salmon on an average in June and July, say 12,000 pounds per month, more or less, and sold green.

Recross-examination:

Frozen salmon begins to arrive about the middle of August. We direct the amount to be sent. After the catch is in we can't depend on any, but a few arrive. California salmon first came in February, 1870; then came in March and April.

Testimony of Geo. C. Richards.

I reside in Boston, and am a fish merchant, of the firm of Stone, Richards & Co. I have been in business about seven years; deal in fresh and frozen salmon. I think we are the second dealers in the United States and in this State in fresh salmon. To considerable extent have dealt
114 in frozen salmon. We have bought frozen salmon of the respondents every year of late. I bought a fish (frozen salmon) of Brown & Seavey; the man said it was as good as they had. It proved objectionable to the customer. This was November 2, 1870.

(Under objection by respondents' counsel to the questions, the witness further said:)

In my opinion it is an advantage to a dealer to have a place to store

and preserve such portions of his stock as he desires. It is considerable advantage, because he can contract for more fish than he could legitimately dispose of, so that he could, if disposed, throw his whole stock on the market or keep back part. Possessing such a place has an effect upon the market price of salmon. If a large dealer in salmon has such a freezer, and uses it at will in June and July, it is a great advantage, because he can contract for more, and then, if not sold, can preserve them. In June and July the great supply of salmon comes in, the last half of June and the first half of July. An over-stock of fresh fish remains a stock that won't sell at profit. We can always salt or split them, but they may have cost too much for that. If a man has 100,000 pounds of salmon in the glut it would make a difference in price if he could put 25,000 pounds into a preserver; say in some cases two cents, and in some five cents per pound; can safely say two cents or more. We sell at lowest single salmon at twenty cents, but at the same time would sell a box containing 150 pounds at eighteen cents, or even fifteen cents. All this is opinion; I cannot say specifically. Soft fish may be frozen and sold with others, but they are soft fish still.

Cross-examination:

Stone, Richardson & Co. formed their firm this fall. I was formerly of the firm of Rogers, Stone & Co. They used a freezer three or four years ago; say in 1867 or 1868. We used it only one year. It was at the fruit-house in Cambridge. We then put in about 10,000
115 pounds the whole season. My firm have handled in one year about 70,000 pounds of salmon in one season on contracts, but at same time sold other salmon not taken on contracts; this from June 1 to September. We call the season from the second week in June to the last of July. For this time we contract at fixed price. For fish before and after these dates we give more. A large amount of contract fish would be 7,000 fish or 70,000 pounds. We have agreed to let other parties have fish by the box at a small advance on the cost, but this would be a small amount. The season for 1870 we sold, say roughly, 125,000 pounds of fish in market, including contract fish as well as other. If fish were withdrawn from market it would benefit all dealers in fish alike, only the man preserving fish may make a profit or save a loss on the fish preserved. If one receives 100,000 pounds during the season, we have such facilities for smoking here and in the provinces and selling as smoked at a profit, that I could not say what would be the gain by taking out 25,000 pounds, if any gain at all. When I said two to five cents per pound I referred to having 100,000 pounds at once thrown on the market in a few days, say three to five.

Sales of fresh salmon in the months of June and July in each of the following years.

	Aggregate quantity.	Price.	Average price.
1864	51,638¼ lbs.	$14,463 36	28 cents per lb.
1865	55,182¼ "	14,050 49	25 46/100 " " "
1866	40,020¾ "	8,766 57	21 91/100 " " "
1867	66,805¼ "	13,317 59	19 93/100 " " "
1868	82,617 "	18,114 82	21 92/100 " " "
1869	121,210½ "	23,937 93	19 74/100 " " "
1870	102,959 "	19,139 35	18 58/100 " " "

116 SCHEDULE P.

Expenses at ice-house.

1866.			
June 22,	paid,	labor	$8 20
" 29,	"	salt, &c	3 43
" "	"	labor and candles	99
July 7,	"	" &c	4 20
" 10,	"	" &c	6 00
" 11,	"	"	4 35
" 14,	"	ice, butter	3 00
" 16,	"	baskets $3, nails 20 cts	3 20
" "	"	labor	3 00
" 23,	"	"	3 00
" 27,	"	rent	100 00
" 31,	"	insurance	105 00
Aug. 1,	"	Morse bill, nails	11 04
" 2,	"	A. P. Clark & Co., salt	84 00
" 4,	"	labor, $5, rope 30 cts	5 30
" 13,	"	"	50
" 14,	"	candles and nails	54
" "	"	sundries	80
" 24,	"	baskets	1 50
Sept. 20,	"	labor	20
Oct. 6,	"	ice bill	263 40
			$611 65

Expenses at Charlestown.

1867.	
Salt	$94 70
Ice	214 96
Labor	154 08
Rent	400 00

117–120 *Expenses at Charlestown.*

1870.	
Carting	$84 00
Insurance	90 00
Rent	400 00
Ice	818 00
Labor extra	96 84
Salt	105 28

121 On the 25th day of March, A. D. 1872, the complainant filed the following exceptions to the master's report, namely:

Complainant's exceptions.

Exceptions taken by the complainant to the report of E. F. Hodges, esq., one of the masters of said court, made and filed in said cause on 7th February, A. D. 1872.

I. The complainant excepts for that the said master has omitted and refused to charge the defendants with the sum of six thousand two hundred and four dollars and nineteen cents ($6,204.19,) which was the gains and profits to the defendants by the increase in the prices received by them for their green fish by reason of their having withdrawn from the market for the time being a certain portion of their stock of fish by

freezing and preserving the same by the complainant's patented process.

II. The complainant excepts for that the said master has found that, assuming the defendants' freezing and preserving of fish during the season of 1870 to have been done with the apparatus altered by cutting in the sides of the freezing-mixture pans the openings referred to by him, and with the communication due to those openings existing between the freezing-mixture and the atmosphere of the preserving-chamber, the atmosphere of the two chambers mingled and became practically one atmosphere, and that the use by the respondents of the apparatus so altered to keep and preserve fish was not an infringement of the complainant's letters-patent.

III. The complainant excepts for that the said master has reported to the court the testimony upon which certain of his findings of fact are based; and that he submits to the court the question of the correctness of those findings.

By his solicitors,

BROWNE & HOLMES.

122 On the 30th day of March, A. D. 1872, the defendants filed the following exceptions to the master's report, namely:

Respondents' exceptions.

The respondents now come and file the following objections to the master's report:

I. As to the motion for leave to introduce further evidence as to the transactions of 1870, they say that the master erred in ruling as matter of law that he could not receive additional testimony after he had submitted a draft report; and they ask that the report be recommitted, with instructions to receive further testimony in accordance with their said motion.

II. They object to the finding of the master as to the operations of the year 1870:

1st. Because the master assumes the rules of evidence to require the respondents to show that they did not infringe the complainant's patent, and throws the burden of proof on the respondents instead of the complainant.

2d. All the evidence before the master was put in by the complainant. If he failed to prove by that evidence that the respondents actually infringed his letters-patent, or if upon that evidence it was left in doubt whether the respondents had or had not so infringed, it was not incumbent on the respondents to introduce evidence to show they had not infringed, and their failure to do so raised no presumption against them. The master erred, therefore, in requiring the respondents to produce the best evidence in their power to prove that they had not done that which the complainant sought to prove but failed to establish.

The master also erred in substituting a "presumption" for proof.

As to the finding of facts relating to the transactions of the year 1870, the respondents object to the report on the following grounds:

123 1st. That there was no evidence tending to prove that the apparatus was used during this year in infringement of the complainant's letters-patent.

2d. The complainant claimed that the alterations did not make the operations substantially different from that described in complainant's

patent, and if they did, that the respondents in some way restored it to its former condition. The master finds the latter to have been done. To this the respondents object as being contrary to the evidence and the weight of evidence, all of which is reported.

3d. The respondents object to the refusals of the master to find as to the transactions of 1870, as specifically requested by them in Schedule K, 4th request.

4th. The respondents object to all the findings of the master relating to the transactions of 1870, both of law and fact, as being contrary to the law and against the evidence.

As to the years 1868 and 1869, they object to the finding of the master as to all matters in controversy relating to the years 1868 and 1869, because—

1st. He has not conformed to the general rule of law regulating the ascertainment of profits in such cases, in that he has not allowed actual payments made by them, and costs and expenses incurred in prosecuting the business.

2d. He has adopted an arbitrary standard, established by himself, for ascertaining the costs incurred during these years, instead of conforming to the evidence introduced by the complainant.

3d. The basis on which he estimated the costs for these two years is erroneous.

4th. There was no evidence to warrant the conclusion reached by the master that the sums paid in those years by the respondents to the Fruit-Preserving Company "were not bona-fide payments," "but were made under a collusive agreement by which the respondents were to receive back some portion of the whole," or "were paid as a reward to induce the company to infringe the complainant's patent and violate the injunction."

5th. That all the findings of the master relating to the costs and expenses of the years 1868 and 1869 are contrary to the evidence and weight of evidence submitted to him and reported to the court.

124 6th. That the master erred in not finding, as specifically requested in Schedule K, requests 2 and 3.

The respondents object to the findings of the master relating to the amount of gain made on green fish.

And the respondents crave leave to rely on the several objections submitted by them to the draft report as contained in Schedule I, except so far as the same have been substantially answered and obviated by the master's additional report.

By their solicitor:

EDWARD AVERY.

125 This cause was thence continued from term to term to the present October term of this court, A. D. 1872, when, to wit, February 10, 1873, the following decree is entered, namely:

Decree.

Upon the coming in of the master's report, and after hearing of the exceptions taken thereto by the respective parties and the arguments of counsel thereon, and on motion of the complainant's counsel, it is ordered, adjudged, and decreed by the court that the said report be, and the same is hereby, confirmed and established; that the patent, dated March 19, 1861, granted to Enoch Piper, upon which this suit is founded, is a good and valid patent, and that the defendants have in-

fringed the same; and that the said defendants and their agents and servants be perpetually enjoined from using, employing, or practising the invention described therein, as prayed for in complainant's bill.

And the court doth further order and decree that the said de-
126 fendants, James Brown and William Seavey, do forthwith pay unto the complainant, Enoch Piper, the sum of $\$11,426\frac{76}{100}$, being the amount of profits found by the master's report to have been received by the said defendants James Brown and William Seavey, from their use of the improvement described in said letters-patent, together with the costs of this suit, taxed at $3,928.76.

From this decree the said defendants, James Brown and William Seavey, claim an appeal to the Supreme Court of the United States, and give a good and sufficient security that they will prosecute their said appeal to effect, which security is approved by the court, and said appeal is allowed accordingly.

A true record.

Attest: ——— ———,
Clerk.

127 The following evidence was used at the hearing of said cause in said circuit court, namely:

Complainant's patent.

No. 732.

The United States of America to all whom these letters-patent shall come:

Whereas Enoch Piper, of Camden, Maine, has alleged that he has invented a new and useful improvement in method of preserving fish, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same has not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Enoch Piper, his heirs, administrators, or assigns, for the term of seventeen years from the nineteenth day of March, 1861, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of said Enoch Piper in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent; and the seal of the Patent-Office has been hereunto affixed.

128 Given under my hand at the city of Washington, this nineteenth
{ SEAL OF THE PATENT-OFFICE. } day of March, in the year of our Lord 1861, and of the Independence of the United States of America the eighty-fifth.

CALEB B. SMITH,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

S. T. SHUGERT,
Acting Commissioner of Patents.

The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern:

Be it known that I, Enoch Piper, of Camden, in the county of Waldo and State of Maine, have invented a new and improved method of preserving fish and meats; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, forming a part of this specification.

The nature of my invention consists in a method of preserving fish and other articles by placing them within a chamber and cooling the latter by means of a freezing-mixture, so applied that no communication shall exist between the interior of the preserving-chamber and that of the vessels in which the freezing-mixture is placed.

The most important application which I propose to make of my invention is for preserving salmon, which are only taken in large quantities in high northern latitudes in summer, so remote from our large cities that they can be made available in a fresh state only by artificial congelation.

129 Hitherto the only method in use for preserving this kind of fish in a fresh state has been to pack them with crushed ice in barrels or boxes. This method, however, owing to the melting of the ice and the consequent moistening of the fish, fails to preserve them fresh and good for more than a month at most; whereas, by my new method and treatment, they can be kept as fresh and sweet as when first caught, and for any desirable length of time, even for years.

I do not profess to have invented the means of producing artificial congelation, nor to have discovered the fact that no decay takes place in animal substances so long as they are kept a few degrees below the freezing-point of water; but the practical application of them to the art of preserving fish and meats as above described is a *a* new and a very valuable improvement.

The apparatus for freezing the fish and keeping them in a frozen state may be constructed in various ways and of different shapes. The apparatus shown in the drawing, however, will suffice to illustrate the principle and mode of operation.

A is a box of wood or other suitable material in which the fish are laid in small quantities on a rack, R. The said box is surrounded by a packing of charcoal or other suitable non-conducting material.

1, 2, 3, 4 are metallic pans, which, being filled with a freezing-mixture, such as salt and ice, are then set over the fish, and the cover A^1 is shut upon them. The temperature in the box soon falls to 10° or 15° below the freezing-point of water, and in about twenty-four hours—the mixture being changed once in twelve hours—the fish will be frozen completely through.

After being thus frozen, the fish or meats may, if desired, be covered with a coating of ice by immersing them a few times in ice-cold water, or by applying the water with a brush or swab several times, forming a coat of about one-eighth of an inch in thickness. To prevent the ice from cracking off I then apply to the fish, when they are to be kept an unusual length of time, a cover of cloth, and in the same manner cover the cloth with another coating of ice, or they may be coated with gum-arabic, india-rubber, gutta-percha, tin-foil, or any suitable substance, either in combination or separately, that will effectually exclude

130 the air, and prevent the juices from escaping by evaporation,

thereby presenting the same plump and fresh appearance as when first frozen.

The fish are then packed closely together in a large preserving-box, C, which is enclosed in a still larger box, B, the space between the two boxes being filled with charcoal or other non-conducting material, to exclude the heat. Passing through the inner box are metallic tubes, D, which are open at the upper end for the introduction of a freezing-mixture, the lower extremities being formed with flanges which are screwed to the bottom of the box. A small pipe, F, leads from the bottom of each tube, D, to the outside of the outer box, the object of said pipes being to draw off the brine from the tubes D as often as required. When not used for this purpose the pipes are stopped by any suitable means at their outer end.

a a are slats or covers, which may be removed at pleasure for the purpose of putting in or taking out the fish.

B^1 is the cover of the outer box, and is provided with holes, D^1, through which when, the cover is shut down, the tubes D may project, so that they may be charged with the freezing-mixture without opening the box.

The combined area of the tubes D may be about one-fifth that of the chambers C; by keeping the same filled with the mixture of salt and ice, the temperature of the preserving-chamber can be maintained for any length of time below the freezing-point, and fish surrounded by this dry and freezing atmosphere will be preserved as fresh and good as when first caught, and for a much longer period than by any other method known to me.

E E E^1 E^1 are small holes for introducing a thermometer to ascertain the temperature in the chamber.

I do not desire to be understood as confining myself to the use of the specific apparatus above described, nor to the use of either or both the preliminary processes of freezing and coating, but I have described the mode of operation which by experience I have found best for preserving the most delicate varieties of fish.

In the case of meat it is not necessary to resort to the coating process, especially beef and pork preserved for salt-packing in warm weather,
which can be done by this treatment with no more loss than
131 in the best winter-weather, while the cold pickle or brine of the
dissolving salt and ice is ready made, and may be drawn off as required to pickle the barrels after packing the meats, etc.

Having thus described my invention, what I claim therein as new and desire to secure by letters-patent is—

Preserving fish or other articles in a close chamber, by means of a freezing-mixture having no contact with the atmosphere of the preserving-chamber, substantially as set forth.

ENOCH PIPER.

Witnesses:
N. AMES.
GEO. H. SMITH.

132 *Complainant's patent.*

No. 36107.

The United States of America, to all to whom these letters-patent shall come:

Whereas Enoch Piper, of Camden, Maine, has alleged that he has invented a new and useful improvement in apparatus for preserving

animal and vegetable substances, which he states has not been known or used before his application, has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discover of said improvement, and that the same has not to the best of his knowledge and belief been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Enoch Piper, his heirs, administrators, or assigns, for a term of seventeen years, from the fifth day of August, one thousand eight hundred and sixty-two, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Enoch Piper, in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed.

133 Given under my hand at the city of Washington, this fifth day of August, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States of America the eighty-seventh.

{ SEAL OF THE PATENT OFFICE. }

J. P. USHER,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

JOHN L. HAYES,
Act. Commissioner of Patents.

The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern:

Be it known that I, Enoch Piper, of Camden, in the county of Knox and State of Maine, have invented a certain new and improved apparatus for preserving animal and vegetable matter by means of artificial congelation; and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings, making part of this specification. My present invention is an improved apparatus for the better carrying out of the method of preserving fish and other articles, for which letters-patent were granted to me, bearing date to the 19th day of March, 1861, and consists in a certain construction and arrangement of the vessels for the reception of the freezing-mixture and the parts connected therewith, by which the charging and cleansing of the same are much facilitated and simplified, the effect of the apparatus rendered more lasting and more uniform, and the use of the freezing-material economized. To enable others skilled in the art to make and use my invention, I will proceed to describe its construction and operation by the aid of the drawings, in which Fig. 1 is a section in the vertical plane indicated by the line *s s* in Fig. 2.

Fig. 2 is a plan, with one of the receivers for the cooling-mixture open. Similar letters of reference indicate like parts in both the figures.

A A are the walls of the chamber M, made double and filled in with charcoal or other non-conducting substance as usual. The opening for entering this chamber may be in any convenient position relatively thereto, but I prefer it at the top, as represented by A^1.

B B B are tubes passing through the chamber M, for the containing of the freezing mixture N, as described in my patent before referred to. These tubes are tapering or larger at the top than at the bottom, and are placed in rows across the chamber at proper intervals.

The lower ends of those in each row are connected to a horizontal tube, C, extending across the bottom of the chamber. The upper ends of these tubes B are connected to troughs or pans D, which are supported upon the sides and are of sufficient length to embrace an entire row of tubes, as shown in the drawings. These troughs or pans D are provided with double covers, D^1, filled with charcoal or other proper substance, as represented. Their connections with the several tubes B are formed by the aid of short sockets, *d* on D, and extending downward into B, so as to form a suitable connection and to allow the ready removal of D when desired.

The several tubes C are closed at both ends. At one end of each two pipes, E and F, are attached; the pipe E connecting with the extreme bottom of the tube and the pipe F at or near the top thereof. These pipes E and F extend out through the side A, as represented, and are for draining and cleaning the tube C. When the apparatus is in use the tube E is stopped tightly with a plug, *e*. The tube F is allowed always to remain open. F extends upwards above the upper side of the tube C, and as the brine in C cannot flow out until it has attained a level equal to the highest part of F, it follows that the tubes C and lower ends of the tubes B are maintained full of brine, and some of the external warm air is allowed to enter through F and circulate through the interstices in the freezing-mixture.

Apertures are made through the double wall A, to allow the tubes E and F to pass freely, and the apertures are stopped by tight-fitting but readily-removable covers, *a*, applied as represented, so as to stop the circulation of air. Each tube, C, may be made shorter than rep-
135 resented, so as to allow the moving of the same with its attachments inward or backward from the side *a* sufficiently to draw a part or the whole of E and F within the interior of the double-casing A, and allow the whole, by turning it slightly, to be lifted from the structure. By this arrangement the pans D and tubes B and C may readily be removed for a thorough cleaning or any other required purpose; but my invention rarely requires to be so overhauled, for reasons which will appear below.

I prefer to make the tubes B and C and pans D of what is known as galvanized iron, but they may be made of any proper and convenient material which is a good conductor of caloric.

The ultimate effect of the apparatus is similar to that described in my patent before referred to, except that it is obtained more uniformly, continuously, and economically. The articles to be preserved are placed in the chamber, either previously prepared by freezing or not, as circumstances may require. A freezing-mixture of ice and salt is placed in the pans D and tubes B, which cools the air in the chamber to some degree below the freezing-point of water, and keeps the articles placed therein in a congealed state, whereby they are preserved from decay.

The pan D, connecting a row of tubes, B, facilitates the filling thereof by leading the freezing-mixture into the latter, and of itself serves to cool the air in the chambers so long as the store therein remains.

The tapering of the tubes B allows the enclosed ice to be supported by the sides and to maintain a contact therewith, by sinking lower in the tube, where it is smaller, as it melts away. The tube C being always filled with the brine, which is of a low temperature, also contributes to the cooling effect; but if the brine was allowed to float away as fast as it formed, no such cooling effects would be produced by the tube C, or, at most, such effects would be very slight. If these tubes C are, however, found in any instance to be in the way of the convenient storage of boxes or barrels, they may be placed between the floors without very materially affecting the action.

There is always more or less sediment from the brine in C, ow-
136 ing to the presence of foreign and insoluble matter in the ice and salt. This collects in the bottom of C, and will not wash out with the small amount of waste brine, even if the pipe E be left open. The end of E is therefore liable to become choked. To avoid this, as also to get the advantage of the cooling effect due to the presence of the cool brine in contact with the surface of C, I employ the pipe F, attached to C at its highest point, and so bent as to keep C always full. The presence of sediment in C will not interfere with the proper escape of the surplus brine through F until C becomes full of sediment, before which time it should be cleaned out. This is done by opening the pipe E, and, by means of rods introduced through E, so agitating the sediment in C as to cause it to flow out with the brine therein. During this process the ice in B may be supported by means of gratings temporarily placed therein for that purpose. As there are always two or more of these tubes C in every chamber, with their corresponding tubes B and pan D, this cleansing process may be performed on one at a time without seriously interfering with the operation of the chamber M, as the only effect thereon is a slight temporary reduction of the amount of cooling surface.

The number and amount of surface of the tubes B and C and pans D depend much upon the circumstances under which the apparatus is to be used. Under ordinary circumstances I have found that the proportion of about one-sixth part of the exterior surface of the chamber is sufficient cooling-surface for preserving articles which have previously frozen, or articles which it is not necessary to freeze entirely through. This proportion may be varied very much without affecting the character of my apparatus. The drawing, however, represents a form and proportion which I believe to be efficient and convenient in practice.

It may be well to remark, although no part of my invention, that the amount of salt used with a given quantity of ice depends on the intensity of the cold required. It should not under any circumstances greatly exceed the proportion of one pound to four pounds of ice, because if more
is used than will dissolve in the temperature which attains in the
137 apparatus in the water formed from the ice, the surplus salt will itself fill the tube C, and necessitate frequent cleaning thereof.

My invention, by retaining the cold brine in the tube C and the lower end of the tubes B for a certain period, accomplishes an effect beyond what would be obtained by simply holding the fresh water in a similar manner in the base of an ordinary refrigerator, because the brine which descends from my freezing-mixture is not at the temperature of 32° F., like ordinary melted ice, but is far colder, and still capable of producing a refrigerating effect on the contents of the structure. My invention, by reason of the elevation of the tube F, holds back in the tubes C and B not simply water, which only stops the circulation of air, but also

utilizes the cold in the brine, which is an effect never before obtained as I am aware.

What I claim as my invention, and desire to secure by letters-patent is—

First. The employment in refrigerating-apparatus of the removable receiving and distributing pan D, in combination with the series of descending tubes B and suitable means of continuously draining the same, substantially as and for the purpose herein described.

Second. I also claim the tapering form of the descending tubes B, arranged to operate in combination with a receiving and distributing pan, D, and a cooling-chamber, M, substantially as and for the purpose specified.

Third. I also claim in refrigerating-apparatus the arrangement of the open ascending drain-tube F, relatively to the tubes C and B, in the manner and for the purpose herein set forth.

In testimony whereof I have hereunto set my name in presence of two subscribing witnesses.

ENOCH PIPER.

Witnesses:
THOMAS D. STETSON.
G. H. BABCOCK.

138 COMPLAINANT'S PROOF.

Deposition of William Seavey, taken, subscribed, and sworn to before N. Austin Parks, examiner.

WILLIAM SEAVEY, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Causten Browne, esq., counsel for complainant, as follows, namely:

Int. 1. State your name, age, residence, and occupation.

Ans. William Seavey; aged 38; residence, Charlestown, Mass.; occupation, fish-dealer.

Int. 2. You are of the firm of Brown & Seavey, who are the defendants in this suit?

Ans. I am.

Int. 3. Did you on Saturday last admit Mr. Renwick, the complainant's expert, in company with Mr. Waters, the respondents' expert, to view your fish-preserving apparatus at Charlestown, Mass.?

Ans. Yes, sir.

Int. 4. After this suit was commenced, were you served with an injunction restraining you from the use of the apparatus as it then was? If so, will you state, as nearly as you can, when that service was made?

Ans. Some time in May or June of last year.

Int. 5. Since that injunction was served has there been any alteration in that apparatus? If so, what?

139 Ans. There has been an alteration. Holes have been cut in the top pan and in the bottom pipes.

Int. 6. These holes were examined by Mr. Renwick at his visit last Saturday, were they not?

Ans. Yes, sir.

Int. 7. How many compartments, or rooms, for preserving fish does your apparatus comprise?

Ans. Four.

Int. 8. Were the holes you speak of made in each of these four compartments? If not, in which of them?

Ans. No, sir, only in two of them; what we call No. 2 and No. 4.

Int. 9. Which compartment was it that Mr. Renwick examined last Saturday?

Ans. No. 2.

Int. 10. Except the holes you speak of, is there any difference in the construction of the apparatus in compartment No. 2 and that of the other three compartments?

Ans. There is a difference between that and No. 1; not in Nos. 3 and 4.

Int. 11. What is the difference as regards No. 1?

Ans. No. 1 room has a pan on the bottom the same as there is at the top—the same size. All the other rooms have pipes instead of the pans.

Int. 12. How is the drain-pipe inserted in, or applied to, the bottom pan in No. 1?

Ans. It is soldered on to the side, at the lower edge of the pan.

Int. 13. Do you know how far, and in what direction on the inside of the pan, that drain-pipe extends?

Ans. I have no answer to that question. I answered it before. It doesn't extend inside at all.

Int. 14. You know this of your own knowledge?

Ans. Yes, sir.

Int. 15. From examination of the apparatus?

Ans. Yes, sir.

Int. 16. When did you examine it?

Ans. When it was put up.

140 Int. 17. Does the drain-pipe extend any distance at all inside of the bottom tubes in compartments No. 2, No. 3, and No. 4?

Ans. It does not.

Int. 18. Will you describe the manner in which you have used these compartments for preserving fish?

Ans. We have used salt and ice, put into the pans at the top. It passed into the perpendicular tubes. Into the chamber through which the tubes extended we put fresh salmon on racks or shelves.

Int. 19. At about what temperature was the air of the chamber kept in which the salmon was placed?

Ans. It was from 18° to 24°.

(Counsel for respondents declines to cross-examine.)

WM. SEAVEY.

Deposition of Henry B. Renwick, taken, subscribed, and sworn to before N. Austin Parks, examiner.

HENRY B. RENWICK, having been duly sworn, doth depose and say, in answer to interrogatories propounded to him by Causten Browne, esq., counsel for complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. Henry B. Renwick; age, 50 years; residence, New York City; occupation, civil and mechanical engineer, and solicitor of patents.

Int. 2. Will you state briefly what your experience has been in the examination and comparison of mechanisms upon questions of substantial identity or difference or otherwise?

Ans. I have been chiefly engaged in that business for the last twenty years, and have been frequently called as expert in the trials of patent suits.

Int. 3. Have you examined letters-patent granted to Enoch Piper, the complainant, dated March 19, 1861, for an improvement in the
141 method of preserving fish? If so, do you understand the construction and use of the apparatus there shown and described, and the process of preserving fish which is carried out by the use of such apparatus?

Ans. I have frequently examined the patent, and believe I understand both the apparatus and the process described therein.

Int. 4. Did you visit, last Saturday, the defendants' establishment at Charlestown, and examine their apparatus for preserving fish? If so, were you accompanied by Mr. Seavey, one of the respondents, and Mr. Hevey Waters, the respondents' expert?

Ans. I visited their establishment on Saturday; Mr. Seavey and Mr. Waters were there at the same time with me. I saw the outside of the whole of the apparatus, and entered and examined one of the chambers.

Int. 5. Did you hear the deposition of Mr. Seavey, just given, in which he states what alteration has been made in the apparatus since the service of the injunction upon them, and also in what manner they have used their apparatus for preserving fish?

Ans. I did.

Int. 6. Will you state whether in your opinion the apparatus of the defendants, and the method or process practised therewith for the preserving of fish, is substantially like or substantially unlike that described and shown in the plaintiff's patent? And please to give the reasons for your opinion.

Ans. The process described in the patent for preserving fish is one in which the fish to be preserved are inserted in an atmosphere cooled below the freezing-point by artificial means; the atmosphere in which the fish are kept being prevented from mingling with the outer air, except when it is necessary to introduce or remove fish, by means of non-conducting walls, and being reduced and kept below the freezing temperature of water by means of a freezing-mixture contained in receptacles which are enclosed within, or form parts of, the enclosure which contains the air thus artificially cooled. The fish are to be introduced into this cold atmosphere, are frozen in it, and may be kept frozen for any length of time, and thus preserved so long as the atmosphere is kept cool below the freezing-point by renewal of the
142 freezing-mixture. The patentee states that he prefers to use two chambers: one containing an atmosphere in which the fish are to be frozen, and another an atmosphere into which the fish are to be removed after being frozen, and also to coat the fish with ice or other coating after being frozen; but I also understood him to state in substance that the coating may be dispensed with, and that the freezing and preserving may be carried out in the same chamber. In the compartment of the respondents' apparatus that I saw, there was a pan at the top, covering the whole, or nearly the whole, of the top of the chamber; rows of pipes or large tubes, about ten inches in diameter, descended from this pan, and were connected at bottom by horizontal pipes, from which extended, through the side of the chamber, a drain-pipe. There was a trap-door above the pan through which the pan could be filled, and its contents would run down or could be forced

down into the pipes or tubes. There was also a door through the non-conducting side of the chamber, so that fish could be deposited therein, or removed therefrom, and racks upon which the fish could be laid. There were some holes, I think, about an inch by an inch and a half, irregular ellipses, in the top of the horizontal pipes which connected the bottoms of the vertical tubes. There were also some holes of the same character in the sides of the pan, and on the inside of the pan there was fastened a V-shaped trough of iron, to prevent the ice and salt from dropping through these holes into the chamber. These troughs were also pierced with holes, so as to provide for some contact of the air of the chamber with the interior of the pan. The holes were very minute in their combined area, with respect both to the area of the chamber and the area of surface of the pipes in the pan. I consider this apparatus substantially identical with that described in the patent of Mr. Piper, and that the process worked out therein, as described by Mr. Seavey, is substantially identical with the improvement in an art or artificial process described in the same patent. In making this statement, I consider Mr. Seavey's testimony that in some of the chambers there are no holes through either the pipes or pans; and I also include my own opinion, which is that the holes or apertures seen by me do not substantially vary either the character of the apparatus or the process which is worked out by means of it; and
143 I also take into consideration Mr. Seavey's statement as to the temperature of the preserving-chambers.

Int. 7. Have you examined the letters-patent granted to Enoch Piper, complainant, dated August 5, 1862, for an improvement in apparatus for preserving animal and vegetable substances; and do you understand the construction and operation of that apparatus, as there described and represented?

Ans. I have examined the patent, and believe I understand the construction and operation therein described.

Int. 8. Referring to the apparatus described in the deposition of Mr. Seavey, before mentioned, will you state how far, if at all, you find in that apparatus the construction and operation of the removable receiving and distributing pan D, the series of descending tubes E, and the drain-tube F, shown in the patent of Mr. Piper?

Ans. In the compartment into which I entered there were flanges and bolts by means of which the receiving-pan was connected with the descending tubes, so that the receptacle of freezing-mixture might be taken apart for cleansing or other purposes. I therefore think that that apparatus has the removable receiving and distributing pan and descending tubes described in Mr. Piper's patent. In that compartment I also found the horizontal tubes, lettered C in the patent, lying, as they are represented in the patent, inside of the preserving-chamber, and near the floor thereof. The drain-pipe had a stop-cock upon the end which was outside of the chamber, and by means of this the horizontal pipe C could be maintained full of brine, thereby contributing in keeping the air of the chamber cold; it being necessary, however, to open the stop-cock from time to time so as to let the brine flow off. The arrangements of horizontal tubes and drain-pipe F, shown in the patents, is described as producing, and will produce, this same effect; and in so far the construction of the respondents' chamber, freezing-mixture receptacle, and drain-pipe corresponds, in construction and operation, with the parts described in the patent. In the patent the drain-pipe is so located that it is automatic in its action; but in the respondents' ap-

paratus it is necessary that an attendant should, from time to time, open and close the stop-cock.

144 Int. 9. Except as regards the difference just mentioned between the drain-pipe shown in the patent and that in the defendants' apparatus, do you find the parts mentioned in the last interrogatory substantially the same in construction and mode of operation in the defendants' apparatus as compared with the plaintiff's patent?

Ans. I do.

(Adjourned to 2 p. m.)

And in answer to cross-interrogatories propounded by Edward Avery, esq., deponent saith:

Cross-int. 1. Do you understand that box A is distinct from box C, as described in Piper's patent of March 19, 1861?

Ans. I do.

Cross-int. 2. By placing fish on the racks in box A, filling the pans, 1, 2, 3, 4, with ice and salt, covering them with the lid or cover, A^1, and permitting them to remain there twelve hours and then opening the cover and changing the mixture and then replacing the cover and allowing the fish to remain twelve hours longer, is described as one of the ways by which Piper freezes his fish. Do you understand that placing the fresh fish in the chamber of box C and filling the tubes with ice and salt, the same result will be attained?

Ans. I do not understand that the fish are to be taken out of box A until fully frozen, and I do understand that fish may be frozen in chamber C, as described in the patent.

Cross-int. 3. Do you think the result would be reached by the same process in both instances?

Ans. I do.

Cross-int. 4. When you examined the defendants' apparatus at Charlestown did you notice whether or not the pan at the top was fastened in any way to the walls of the chamber?

Ans. I did not.

Cross-int. 5. If the pan was fastened to the walls of the chamber and riveted or bolted to the descending tubes, would that, as you understand it, be a "removable" pan?

145 Ans. If the pans were so fastened to the walls of the chamber as that they could not be removed by unscrewing of bolts or some similar contrivance, and were riveted or soldered to the descending tubes so that the tubes could not be removed from the pan without cutting the rivets or destroying the soldered joint, then I should consider that the pans were not removable in the sense of the patent.

Cross-int. 6. How would it be if the pans were nailed to the walls of the chamber?

Ans. Even if they were nailed to the walls of the chamber, and the joints between the pans and tubes were such as they now are in the respondents' apparatus, I should still consider them removable pans in the sense of the patent.

Cross-int. 7. Please state what you mean by the word "removable," as applied to the pans.

Ans. I mean that it means such a connection between the pans and the tubes that they may be readily separated from each other for cleaning or other purposes.

Cross-int. 8. Referring to the defendants' apparatus, as seen by you, if the pans are nailed to the walls of the chamber, describe how you would readily separate the pans and the tubes from each other.

Ans. By unscrewing the screw-bolts in the flanges which are upon the

tubes and upon a short socket which is attached to the pan, and forms the upper part of the tubes. This refers only to the compartment I saw, as I don't know how the others are constructed.

Cross-int. 9. If the perpendicular tubes were soldered or riveted to the bottom pan or horizontal tube into which they enter, and the upper pan was nailed to the walls of the house, would you call that pan a "removable" pan?

Ans. If it still had the joint which I have before described upon the socket—I mean with a flange—I should still consider it a removable pan in the sense of the patent; for the only possible use of such a joint is to get the pans and tubes separated from each other. It would be much cheaper and better to have the joint soldered or riveted if there were no purpose of removal.

Cross-int. 10. If the perpendicular tubes are riveted or soldered to the horizontal tubes, and the upper pan fastened to the casings of
146 the chamber, how could you separate the pan and the tubes, even if the bolts were removed?

Ans. If I remember the construction aright, the lower tubes could then be moved sidewise; but the easiest way would be to pull the nails out of the pan and lift it right off of the tubes.

Cross-int. 11. What do you understand the object of the removal of the removable pan to be?

Ans. To take the apparatus apart for the purpose of cleaning it.

Cross-int. 12. In the respondents' apparatus, examined by you at Charlestown, at about what point between the receiving-pan and the drain-pipe will the ice or freezing-mixture ordinarily terminate?

Ans. I suppose that the ice and salt, and the pickle resulting from their mixture, will fill the whole receptacle—pan, tubes, and lower pipe—if there be enough put in. In the compartment I saw the level of the liquid pickle cannot be above the top of the lower horizontal tubes, because if it were it would flow out through the holes punched in them, which I have before spoken of.

Cross-int. 13. If ice and salt were put into the receiving-pan, the descending tubes filled, the cock opened in the drain-pipe, so that no brine could accumulate in the horizontal tubes, where, in your judgment, would be the lowest point of the ice or ice and salt?

Ans. I do not know where it would be under such circumstances. I suppose some of the ice and salt would reach the bottom of the horizontal tubes.

Cross-int. 14. With reference to the plaintiff's patent of August 5th, '62, if ice and salt were put into the receiving-pans, the tubes filled, and brine allowed to flow through the drain-pipe, where, in your judgment, would be the lowest point of the ice or ice and salt?

Ans. If the lower drain-pipe were closed and the upper one open, the level of the ice, I should think, would be somewhere about the tops of the horizontal tubes, but perhaps below it, as the superincumbent weight of ice in the upright tubes might force it down. If the lower drain-pipe were left open, or plug removed for a time, then, I should think, the ice would reach to the bottom of the horizontal tubes.

Cross-int. 15. If the cock were closed in the drain-pipe in defend-
147 ants' apparatus, would that make any substantial difference in the position of the ice in the tubes?

Ans. I don't think there would be any substantial difference. There would, however, I think, be less ice in the horizontal tubes.

Cross-int. 16. Do you understand that there is any substantial differ-

ence between the apparatus described in Piper's patent of August 5th, '62, and that of the respondents which you saw at Charlestown?

Ans. There are some substantial differences. In the first place the apparatus described in Piper's contains tapering descending tubes in connection with a receiving and distributing pan and a cooling-chamber. In the defendants' apparatus the tubes are not tapering, and I have already stated that it, the patent, described a drain-tube which is always open, and at the same time so arranged as to keep the lower horizontal tubes full of brine; and I have already stated that in this latter point there is a difference between Mr. Piper's patent and that used by the respondents.

Cross-int. 17. Do you understand that brine in the apparatus described in the plaintiff's patent of August, '62, flows up into the perpendicular tubes and around the ice?

Ans. No, I do not. With the pipe, F, bent exactly as shown in the drawing, the level of the brine will be retained slightly above the lower ends of the upright tubes. If that is what you mean by "flowing up," then the brine slightly "flows up" the tubes.

Cross-int. 18. With the cock closed in defendants' apparatus, would the brine reach the same level as stated in your last answer?

Ans. Not quite; it will reach a little way into the bottom of defendants' vertical tubes, where they cap over the horizontal pipe, but cannot, as I have before stated, reach higher than the level of the top of the defendants' horizontal pipe.

Cross-int. 19. How would it be if there were no holes in the horizontal tubes?

Ans. Then, by keeping the cock shut long enough, the brine could be retained in the bottom of, or higher up, the vertical pipe.

Cross-int. 20. In your opinion is it an advantage or disadvantage to have brine flow up into the perpendicular tubes?

148 Ans. I should say a little brine in the bottom of the tubes would do no harm and no material good.

Cross-int. 21. How if it flowed up half-way?

Ans. My answer is a mere supposition, and I have never made any experiments upon the subject; but I should think that in very warm weather it would be objectionable.

Cross-int. 22. Why would it be objectionable?

Ans. Because there would be less amount of very cold surface to maintain the temperature of the chamber?

Cross-int. 23. Then, in your opinion, ice and salt in the tubes are preferable to brine?

Ans. That is my opinion; although I am not at all certain about the matter.

Cross-int. 24. If the cock of the drain-pipe in defendants' apparatus was to be constantly kept open, how would it affect the operation of the apparatus?

Ans. The air would enter and cause a great waste of ice. I don't know of any other effect that it would have, except that it would be more difficult to maintain the chamber at a low temperature.

Cross-int. 25. Why would it be more difficult to maintain the chamber at a low temperature?

Ans. Because the horizontal pipes could not be kept so cold.

Cross-int. 26. Why not?

Ans. Because air would be flowing into and out of them, and it would come in at about the temperature of the atmosphere.

Cross-int. 27. Supposing the aperture to be adjusted so as to be as

nearly as possible only sufficient for purposes of drainage, what then would be the effect?

Ans. If it were adjusted so as to be sufficient for drainage under a head of pickle equal to the vertical height of the horizontal pipes, then the effect would be exactly the same as that of the continuous drain of the Piper patent. If it were so adjusted as to require a greater head of pickle to permit all the drainage to flow out, then the level of the pickle would be somewhere in the upright pipes. If the adjustment of the opening were such as to require a less head, then the level
149 of the pickle would be somewhere below the top of the horizontal pipes, the precise height depending upon the amount of pickle to be drained off in proportion to the size of the opening.

Cross-int. 28. Question repeated.

Ans. I have already answered the question as fully as I can without going into unnecessary prolixity.

(Adjourned to 6 p. m.

Cross-int. 29. What do you understand to be the meaning of "drainage?"

Ans. The carrying away of water, usually surface water or water resting on the surface of the earth, by means of gutters or closed pipes, the pipes being so large in capacity that there is always air or currents of air above the surface of the water.

Cross-int. 30. If the aperture were so adjusted as to be, as nearly as possible, only sufficient to drain the pipes, would there be any such head of brine as is stated in your reply to 27th cross-interrogatory?

Ans. There certainly would to a greater or a less extent, for the simple reason that you cannot get water to flow through a pipe, so as to fill it, without some head. In addition to this, the quantity of pickle formed in any given time is constantly varying. If the pipe be sufficiently large to carry off the greatest amount of pickle under a low head, then air will enter when a less amount of pickle is formed, so that the adjustment supposed in the question cannot be made practically, unless advantage be taken, as indicated in my former answer, of the varying amounts of fluid that will flow through a pipe in a given time, depending upon the varying degree of head.

Cross-int. 31. You do not mean to say that an aperture could not be "adjusted as nearly as possible," as stated in the previous questions, do you?

Ans. No, I certainly do not; but when so "adjusted as nearly as possible" it would have precisely the effects I have described.

Cross-int. 32. If the size of the aperture were sufficient to carry off the greatest amount of brine without quite filling it, would not that be an adjustment as nearly as possible; sufficient for the drainage?

Ans. No; because then air would come in. It would be too big
150 for the drainage, especially when the volume of brine made in any given time decreased.

Cross-int. 33. Suppose in one case the drain-pipe to be so small, in the respondents' apparatus, as that the greatest drainage of brine shall fill $\frac{15}{16}$ and in another case the aperture so adjusted as that the greatest amount of drainage would fill only $\frac{1}{16}$ of the aperture, would there be any substantial difference in the mode of operation in the two cases?

Ans. There would be no substantial difference in the mode of operation of the apparatus as a freezing or preserving apparatus generally, neither would there be any substantial difference in the mode of operation depending upon the amount of brine contained in the lower series

of pipes. In both cases the drain would be what I have defined a drain to be, with currents of air passing over the water, the difference being in degree only, and involving a greater waste of ice with a large pipe than with a small one. In both cases there would be no reservoir of water, or standing water, in the lower pipes, but merely streams trickling to the drainage-aperture.

Cross-int. 34. Suppose the cock to be opened so as to admit of a continuous drainage without filling the aperature in respondents' apparatus in the one case, and, in another case, suppose the apparatus to be worked as described by you in your answers to direct interrogatories 8 and 9; would there be any substantial difference in the mode of operation in the two cases?

Ans. There would be this substantial difference: that in the former case you would melt the ice uselessly and deprive yourself of the whole of the benefit of the refrigerating surface of the horizontal tubes; while in the latter case you would make the surface of the lower tubes available, utilize to a certain extent the cold in the brine, and prevent useless waste of the ice. There would be no difference in the mode of operation so far as the mere keeping of the chamber cold was concerned, but there would be a difference in the operation going on within the receptacle of the freezing-mixture.

Cross-int. 35. Would the defendant's apparatus, worked with an open drain-pipe, infringe any of the claims contained in the plaintiff's patent of August 5, 1862?

151 (Objected to.)

Ans. If the drain-pipe had so large an orifice that it was not filled with brine, and air entered, it would not. If the orifice were of such size that no air entered, and, in consequence, brine was always contained to a greater or less extent in the horizontal pipes, and possibly in the vertical pipes, it would.

Adjourned.

FRIDAY, 17*th July*, 1868.

Henry B. Renwick recalled, and cross-examination resumed before R. C. Stilwell, examiner.

Cross-int. 36. If an apparatus were constructed with a receiving and distributing pan at the top, not removable, descending tapering tubes from that pan through the preserving-chamber, entering into a horizontal tube at the bottom, from which horizontal tube an open drain-pipe passed out for continuous drainage, would that be an infringement of either of the plaintiff's patents? If yea, which one of them, and of which claim, and state the reasons which lead you to that conclusion?

(Objected to.)

Ans. It would certainly be an infringement of the second claim of the Piper patent, 36107, and if freezing mixtures were employed in it, so as to keep the preserving-chamber below the freezing-point, and freeze and preserve fish, etc., exposed in the atmosphere of a preserving-chamber, it would be an infringement of patent No. 732. The question does not state that the tubes and pan are to be located within the non-conducting walls of a chamber; but in my answer I supposed that this feature was included in the question. The reasons for this opinion are obvious.

Cross-int. 37. If a refrigeratory apparatus were constructed with a descending tapering tube or pan in the form of the letter V in one direction, and parallel sides in the other passing from the top to the bottom

152 of the preserving-chamber, with a trap or cess-pool drainage at the angular meeting of the inclined sides at the bottom, would that infringe either of the plaintiff's patents; and if yea, which of them, and which claim?

(Objected to.)

Ans. I am in some doubt whether I understand the apparatus described in the question, and I have never heard of a cess-pool as applied to a refrigerator. If your question supposes a single wedge-shaped receptacle for a freezing-mixture, applied within a chamber edge downwards, and the top passing through the top of the chamber, and provided at the bottom or edge with the usual bent drain-pipe of the refrigerator, and the chamber provided with the proper door for introducing the material, and freezing-mixtures were employed within the wedge-shaped receptacle so as to freeze fish, etc., and preserve them frozen at a temperature below the freezing-point, such a use of such an apparatus would infringe patent No. 732; but the apparatus would be no infringement of patent No. 36107.

Cross-int. 38. Will you please state why such an use of the apparatus as you have described in your last answer would infringe the plaintiff's patent No. 732?

(Objected to.)

Ans. Because the use of such an apparatus in the manner described by me in my last answer would work out the improvement in an art which I understand to be the subject-matter of patent No. 732.

Cross-int. 39. What do you understand that improvement to be?

Ans. I have already stated it as distinctly as I could in my direct examination.

Cross-int. 40. Will you please refer to that portion of your direct examination in which you have so stated it or repeat substantially the statement?

(Objected to.)

Ans. As the direct examination is not before me, I cannot well refer to it. I consider the patent No. 732 to be for a process or art for preserving fish or animal substances for a considerable length of time, by subjecting such fish, etc., to an atmosphere cooled artificially by freezing-mixtures, contained in proper receptacles, to a temperature be-

153 low the freezing-point, this atmosphere being enclosed or prevented from mingling with the air by proper walls, enclosing a receptacle for a freezing-mixture, and there being practically and substantially a separation between this atmosphere and the interior of the receptacle for a freezing-mixture; when the fish are thoroughly frozen they are to be kept preserved in the same chamber in which they are frozen or in other similar chambers; but the atmosphere in which they are preserved must always be kept below the freezing-point. The patentee gives certain directions for coating the fish with ice, etc., after they are frozen; but I do not understand that it is necessary so to coat the fish, as the patentee states that it may be done if desired. The gist of the invention is the freezing and preserving the fish is an atmosphere separate from the external air and always kept below the freezing-point.

Cross-int. 41. If an apparatus constructed with a metallic pan enclosed within non-conducting walls and placed at the top of the preserving-chamber inclining about forty-five degrees from the top to one side and extending over about one-half of the top, with descending pipes for continuous drainage passing from the lowest angle of the pan through the preserving-chamber, affording continuous drainage, and ice and salt were placed in the pan, ice at the bottom of the preserving-chamber and

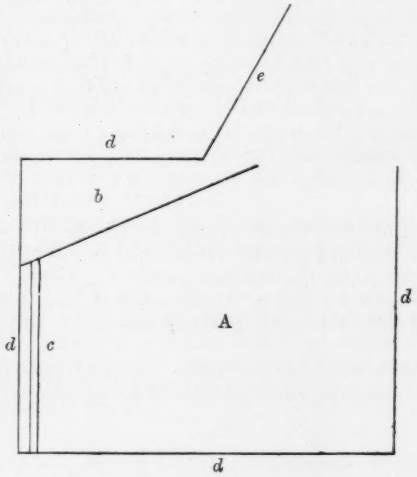
fish placed on this ice were frozen, would such freezing be an infringement of either of the plaintiff's patents; and if yea, of which, and of which claim? And please state your reasons for such conclusion.

(Objected to.)

Ans. If you will give me a drawing or model of the apparatus I will endeavor to answer your question. I do not understand it sufficiently to be able to answer it.

(Question objected to by plaintiff's counsel. Question not objected to until answered, so far as answered.)

154 Cross int. 42. I herewith present an end view of the apparatus referred to in the last question.



END VIEW.

A. Preserving-chamber.

b. The metallic pipe for receiving the ice and salt.

c. The drain-pipe.

d. Non-conducting walls.

e. Cover, shutting down upon the pan and walls of the preserving-chamber.

Placing ice and salt in the pan, *b*, ice on the bottom of chamber A, the fish on that ice, would the freezing of the fish so placed be an infringement of either of the plaintiff's patents? If yea, which of them and which claim? And give the reasons for such conclusion.

(Objected to.)

Ans. Please inform me, before I answer the question, what is the use of the ice on the bottom of the chamber; also, as to whether the inclined metal surface of the receptacle was perforated or closed; also, whether the top of it was in contact all along with the top of the chamber; as to the temperature of the chamber; and also as to how the freezing-mixture was introduced.

155 Cross-int. 43. As to the first inquiry, I do not know as it would be of any use, but leave that to be determined by the witness. As to the second, suppose the metallic surface was close, having no perforation, and that the top was in contact with the top of the chamber when

the freezing-mixture was introduced, when the lid was opened, as shown in the sketch, and the temperature of the chamber sufficiently low to freeze fish.

(Objected to.)

Ans. By sufficiently low to freeze fish, I suppose you to mean below the freezing-point of water; and by your statement that the "top was in contact," that the atmosphere in which the fish were contained was kept out of contact with the freezing-mixture, except when the trap-door was open. I can see no possible use for the ice, if the temperature of the chamber was kept below freezing; and its presence, if uncontradicted by other statements, would lead me to the belief that the chamber was not kept below the freezing-point; one action of the apparatus being to employ a freezing-mixture for the purpose of keeping ice from being melted. The small aperture for the introduction of freezing-mixture, and the straight pipes leading up into its receptacle, constantly admitting currents of warm air to melt the mixture, and the consequent need of frequent renewal of that mixture, added to the fact that the whole atmosphere of the preserving-chamber must be in free contact with the open air while the freezing-mixture is renewed; and, in addition to this, the small radiating cold surface in proportion to the size of the chamber—all lead me to believe that it would be difficult, if not impossible, to maintain the freezing-receptacle at a sufficiently low temperature. If it could be so kept constantly, and fish were frozen and kept frozen in the atmosphere of the chamber, such a use of the contrivance, if it can be called one, would infringe Piper's patent No. 732, and it would manifestly not be an infringment of any of the claims of Piper's patent No. 36107, which are all to combinations of parts, none of which are found in the sketch and in the description thereof.

Cross-int. 44. Please examine the copy of patent granted John Goods, dated 17th August, 1843, and state if the apparatus therein de-
156 scribed could be used for the freezing of fish or other animal substances, using, instead of ice alone, ice commingled with salt. And if yea, whether or not such freezing would infringe either of the plaintiff's patents, and which claim.

(Copy of patent handed in and marked Def't's Exhibit No. 1.)

(Objected to.)

Ans. I have examined the patent referred to, and the construction of the apparatus is such that I do not see how freezing-mixture could be used in it in place of ice.

Cross-int. 45. If the freezing-mixture of ice and salt were to be used only in the pan placed over the top, and ice used elsewhere, as described in the patent, and fish or other animal substances were frozen in the apparatus, would such freezing be an infringement, as inquired in last question?

(Objected to.)

Ans. Owing to the construction of the apparatus, with the large apertures K K leading directly into the preserving-chamber, and owing to the fact that the drainage is from the preserving-chamber, and also owing to the fact that the brine from the freezing-mixture above would percolate through the ice, and the whole mass become a mixture of ice and brine in direct contact with the air of the preserving-chamber, I do not see how the apparatus can be used as stated in the question; or, if possible so to use it, that fish could be frozen in it according to Piper's process.

Cross-int. 46. Suppose the space to be filled with a non-conducting substance instead of ice, and the movable pan at the top, filled with the

freezing-mixture, furnished with a drain-pipe descending through the space and through the bottom of the case, having such a drainage as to allow the brine to escape without admitting the external air, could it then be used for the freezing of fish or other animal substances? And if so, would such freezing be an infringement of plaintiff's patents; and if yea, which of them, and which claim?

(Objected to.)

Ans. I think it could; and, if used as directed in patent No. 732, would infringe that patent; it would not infringe the other.

HENRY B. RENWICK.

Adjourned to 10 a. m., 18th July, 1868.

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159 THURSDAY, *March* 25, 1869.

Present: Edward Avery, esq., counsel for defendant; Isaac J. Cutter, esq., counsel for complainant.

Adjourned to the 26th instant, at 11 a. m.

Deposition of Peter H. Miller, taken, subscribed, and sworn to before R. E. Stilwell, examiner.

FRIDAY, *March* 26, 1869.

Present: Counsel as before.

PETER H. MILLER, called and sworn as a witness on the part of complainant, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Peter H. Miller. I was born on the 16th of October, 1815. I reside at Eighty-fourth street, in the city of New York, between Eleventh and Twelfth avenues. My occupation is policeman.

Int. 2. Were you ever engaged in the fish business in the Centre Market in the city of New York? If yea, from what time to what time?

160 Ans. Yes; from the time that I was nine years of age till the latter part of November, 1861.

Int. 3. How were you engaged in the fish business in that market, and what stand or stall did you occupy?

Ans. Retail business; stalls eight, ten, and twelve. These were the numbers I had when I left the market.

Int. 4. Were you employed by some party, or did you carry on business for yourself?

Ans. For myself.

Int. 5. While in business in that market, did you know Joseph H. Racey, jr., fish-dealer in the same market, and how long have you known him?

Ans. I knew him from the time he first came in until the time I left, and until the present moment.

Int. 6. How near were the stands or stalls you occupied to the stands or stalls occupied by said Racey?

Ans. Well, I was nearly opposite to him. He was on the opposite side of the market. I was about nine feet north of him.

Int. 7. Were your stands or stalls in the same building?

Ans. Yes; they were.

Int. 8. Were not said Racey's stands in sight of yours?

Ans. Yes.

Int. 9. What was the business that said Racey carried on in that market? Describe it.

Ans. Well, principally fish; sometimes oysters.

Int. 10. Was that wholesale or retail?

Ans. Retail.

Int. 11. State whether or not your hours of business were the same while you and he were there.

Ans. Yes.

Int. 12. Did you attend to your business of selling fish daily or did you employ help?

Ans. I attended to it myself. I had help, of course, employed.

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163 Int. 13. Do you know the numbers of the stalls occupied by Racey? If so, state them.

Ans. Fifteen and seventeen, I think it was, when I left.

Int. 14. How long had he been occupying those two stalls?

Ans. I can't state correctly. It might have been three or four years. It was several years.

Int. 15. What were your opportunities for observing the kind of fish that he kept for sale—their condition, as to their being in a frozen state or not, and the season of the year that they were exposed for sale?

Ans. My opportunity was very good. If he had had any fish different from what the rest of us had, I should have been very likely to have known it.

(That part of the answer commencing with "If he had," etc., is objected to as inadmissible.)

Int. 16. Where were the fish that Racey exposed for sale placed for that purpose during business hours?

(Question objected to, as to form and substance leading and immaterial.)

Ans. On his stand in the market. The fish were within my sight.

Int. 17. What kind of fish did you see him selling from time to time?

Ans. All kinds in their season.

Int. 18. Did you see him selling fresh fish out of their season, meaning by expression "out of season," the season of the year different from that in which they are caught?

(Objected to as to form and substance.)

Ans. No.

Int. 19. Were there any fresh fish in a frozen state exposed for sale by Mr. Racey in that market before you left in November, 1861?

(Objected to as to form and substance.)

Ans. That can be answered in two ways. In winter-time plenty of frozen fish; in summer-time none.

Int. 20. Were there any frozen fish exposed for sale by Mr. Racey in that market prior to your leaving out of their season?

164 (Objected to as to form and substance.)

Ans. No.

Int. 21. Did Mr. Racey occupy a cellar in or under the market before you left. If yea, where was it?

Ans. To the best of my recollection, he did not.

Int. 22. Was there a cellar occupied in or under the market in common by the market-men, or some of them? If so, where was it?

(Objected to, as to form and substance.)

Ans. There was a cellar there that was set apart for the use of the clerk of the market. It was occupied by a man of the name of Thomas Wood. He hired it from the clerk, and paid the rent to the clerk for it. I saw Wood paying the rent to the clerk at different times. No one else but Mr. Wood latterly occupied the cellar.

(Answer objected to as not responsive.)

Int. 23. State whether or not there was a cellar under the market occupied by more than one person at one time. If so, state its number or otherwise describe it.

(Objected to as to form and substance.)

Ans. There were several cellars under the market, occupied by two or three parties.

Int. 24. Was there a cellar under that market occupied by the market-men and the clerk of the market for storage purposes? If yea, give its number, or otherwise describe it.

(Objected to as to form and substance.)

Ans. Yes; the second cellar from Broome street, in Centre. I do not know its number.

Int. 25. At the time you left, what clerk of the market used it with others?

(Objected to as to form and substance.)

Ans. Mr. Toomey.

Int. 26. At the time of your leaving, in November, '61, who occupied the cellar last referred to? Give the names of all the persons that you know of occupying it in any way.

(Objected to as to form and substance.)

Ans. Mr. Toomey occupied it. Mr. Toomey was a butcher in
165 market and clerk of the market. I don't know of anybody else occupying it.

Int. 27. Were there others occupying it with Mr. Toomey, whose names you do not remember?

(Objected to as before.)

Ans. I think not.

Int. 28. Prior to your leaving the market, did Mr. Racey have a freezing-apparatus for freezing fish and other animal substances in or under the market?

(Objected to as to form and substance.)

Ans. Not that I am aware of.

Int. 29. Prior to your leaving the market, as stated, what did Mr. Racey have in said market in the way of ice-boxes, refrigerators, or freezing-apparatus of any kind? State all that he had in or under said market.

(Objected to as to form and substance.)

Ans. He had two ice-boxes in the market. That is all that I know of.

Int. 30. What do you mean by ice-boxes?

(Objected to as to form and substance.)

Ans. The ordinary refrigerators. The old-fashioned ones. I don't know of any other name for them.

Int. 31. What was the difference, if any, between these two ice-boxes used by him in the market and the ice-boxes used by yourself and other men in the market?

(Objected to as to form and substance.)

Ans. None.

Int. 32. How many ice-boxes did you have?

Ans. One. It was a very large one.

Int. 33. Now state all the kinds of fresh fish sold by Racey in said market while you were there, and state also the times of their being sold, with reference to the question of their being sold in or out of season, and their condition when sold out of their season.

(Objected to, as to form and substance.)

Ans. He sold all kinds that came to market. I have known him to sell fresh trout out of season. He did not sell any other kind out
166 of season that I know of. The trout were not in a frozen state when sold. What I mean as to the trout being sold out of season is, that it was against the law to sell them.

Int. 34. Are trout caught in all seasons of the year, or can they be, without any reference to the law on the subject?

(Objected to, as to form and substance.)

Ans. No.

Int. 35. In what seasons are they caught, waiving any question of law on the subject?

(Objected to, as to form and substance.)

Ans. Well, I suppose they can be caught the whole year round.

Int. 36. When were you last in the cellar stated by you to have been occupied by Mr. Toomey, prior to your leaving said market?

(Objected to, as to form and substance.)

Ans. Well, I can't say positively as to that.

Int. 37. State as nearly as you can.

(Objected to, as to form and substance.)

Ans. It might have been two months, and it might have been six. I can't state positively as to that.

Int. 38. Whom did you go in with, if any one?

(Objected to, as to form and substance.)

Ans. I might have gone in alone. I might have gone in with Mr. Wood.

Int. 39. Within two years prior to your leaving the market, how many times were you in the cellar last referred to? State as near as you can.

(Objected to, as to form and substance.)

Ans. The greater part of the time I was in the habit of going into it every day.

Int. 40. What articles did you see in there during that period? State as fully as you can.

(Objected to, as to form and substance.)

Ans. Principally oysters, old baskets, old trumpery, boxes, brooms, that would be put down there to get them out of the way.

Int. 41. In what were the oysters placed?

(Objected to, as to form and substance.)

167 Ans. They were generally put in piles, on the floor.

Int. 42. During the said period of two years, prior to your leaving the market, state what was the largest article you saw in said cellar, and describe it.

(Objected to, as to form and substance.)

Ans. A barrel, to the best of my knowledge.

Int. 43. How long had this cellar been set apart in the way you have stated, for the clerk of the market and others, prior to your leaving the market?

(Objected to, as to form and substance.)

Ans. From the time the market was built.

Int. 44. Did you make any use of it at any time? If so, when and what use?

(Objected to, as to form and substance.)

Ans. I had some old lumber, some boards, in it once, and such like.

Int. 45. How long have you been a policeman?

Ans. Since the 19th of November, 1862.

Cross-examination, de bene esse, on the part of the respondent, without waiving any objections to the direct interrogatories:

Cross-int. 1. Did you sell out your business in the market? If so, to whom?

Ans. Yes, sir. To John Connolly.

Cross-int. 2. When?

Ans. January, '62.

Cross-int. 3. Who carried on the business between November '61 and January, '62?

Ans. Nobody. The place was closed up.

Cross-int. 4. You did not fail, did you?

Ans. No, sir.

Cross-int. 5. When last did you examine any ice-boxes belonging to Racey, or used by him in or about Centre Market?

Ans. I saw the inside of the boxes a month previous to my leaving the market. Perhaps it might not have been so long.

Cross-int. 6. How do you fix the time?

168 Ans. Well, I was sometimes in the habit of going and buying of him; if I did not have an article, and he had it, I would get it of him. If he had not an article, and I had it, he would get it of me.

Cross-int. 7. How does that fix the time?

Ans. I don't think it is possible that any month elapsed that I was not there.

Cross-int. 8. How does that fix the fact that you saw it, or examined it at that time?

Ans. I can't fix it at any other date. I have no note of it.

Cross-int. 9. Will you say, as a matter of memory, any particular day in the year 1861, when you know you examined the two ice-boxes, as you term them, which belonged to Mr. Racey, or were used by him in his business?

Ans. No.

Cross-int. 10. Can you tell any month when you examined them?

Ans. Examining and seeing are two different things. I never examined them. I have seen the inside and outside of the boxes.

Cross-int. 11. When last, as a matter of memory, giving month or day, did you see the whole of the inside of those two ice-boxes?

Ans. Well, I should say in October, to the best of my recollection.

Cross-int. 12. What day?

Ans. I can't state the day. It is impossible for a man to state about eight years without making a note of it.

Cross-int. 13. Why, then, do you say October, rather than September?

Ans. Because I believe it was later than September.

Cross-int. 14. Why do you believe that?

Ans. Because I was in the habit of getting oftener than that of him.

Cross-int. 15. Every time you bought of him, did he open and empty his ice-chests, both of them?

Ans. No, sir.

Cross-int. 16. Did he always open them?

169 Ans. No, sir.

Cross-int. 17. Do you ever remember to have seen them empty?

Ans. Yes, sir.

Cross-int. 18. Where were they located?

Ans. Behind the stand.

Cross-int. 19. Describe fully their location in reference to the stand?

Ans. Well, he had a little outhouse, a porch built back of the stand; he kept the ice-boxes in that outhouse or porch.

Cross-int. 20. Do you remember his building a counting-room there?

Ans. He had a place fixed up very nicely, with stained glass, and gilt, behind his counter, where he kept his desk.

Cross-int. 21. Did you ever see any ice-box in that place, behind that partition?

Ans. I can't say positively that I did.

Cross-int. 22. Did you ever purchase of Mr. Racey any Spanish mackerel?

Ans. Yes, sir, and all other kinds of fish.

Cross-int. 23. Did you purchase mackerel when they were not being caught?

Ans. No, sir.

Cross-int. 24. Never purchased any except when they were coming into the market?

Ans. No, sir.

Cross-int. 25. Can you fix the year and month, as a simple matter of memory, without reasoning, when you were last in the cellar described by you as being occupied by Toomey?

Ans. No, sir.

Cross-int. 26. Who was the clerk of the market, if you know, before Toomey?

Ans. I can't recollect, sir.

Cross-int. 27. Do you mean to say, as a matter of fact, that Mr. Racey never sold any preserved fish either in or out of season during the time you were occupying that market?

170 Ans. Not to my knowledge.

Cross-int. 28. What were your usual hours at that market?

Ans. Well, from about daybreak until one o'clock.

Cross-int. 29. Were those hours observed by you during the years 1860 and 1861?

Ans. Yes, sir.

P. H. MILLER.

Deposition of Thomas Wood, taken, subscribed, and sworn to before R. E Stillwell, examiner.

MARCH 26, 1869.

THOMAS WOOD, called and sworn as a witness on the part of the complainant, deposes and says:

Int. 1. What is your name, age, residence, and occupation, and where is your place of business?

Ans. My name is Thomas Wood; I will be sixty-three years of age next April; I reside at 15 Charles street, New York City; my occupation is oyster-dealer; my place of business is in Centre Market.

Int. 2. How long have you been engaged in business in Centre Market?

Ans. Well, I should think about thirty-eight years, as near as I can tell. From 1831 or 1832.

Int. 3. How long have you carried on business for yourself, and what are the numbers of your stalls?

Ans. During the whole time, sir; the number of my stalls are one and three.

Int. 4. Do you know Joseph H. Racey, jr., fish-dealer in that market; and, if yea, how long have you known him?

Ans. Yes, sir. I knew him twenty years or over.

171 Int. 5. State whether or not he at present occupies a cellar under that market; and, if yea, give its number or describe location.

Ans. There is no number to it that I know of. It is the second cellar south of Broome street. It runs through, if not partitioned off.

Int. 6. Who occupied that cellar prior to Mr. Racey's occupying it? (Objected to.)

Ans. I occupied it myself.

Int. 7. Who occupied it besides yourself prior to Mr. Racey's occupying it?

(Objected to.)

Ans. No one but me, except that I allowed my neighbors to put in some of their things sometimes. I once allowed Mr. Dean to put in an ice-box there—a common refrigerator.

Int. 8. To whom did you pay rent while you occupied it? and give the name of parties to whom you paid rent, as near as you can remember, beginning with the last man to whom you paid rent.

(Objected to, as immaterial and inadmissible.)

Ans. I paid rent to the different clerks. Mr. Matthew Toomey was the last person to whom I paid rent. Before that I paid rent to James Egbert and others.

Int. 9. To whom did you deliver this cellar when you ceased to hire it of Mr. Toomey?

(Objected to, as to form and substance.)

Ans. To Mr. Toomey.

Int. 10. How long before Mr. Toomey ceased to be clerk 'as it that you delivered the cellar up to him? State as near as you can.

(Objected to.)

Ans. I think it is a little over a year, but I cannot positively say. I think Toomey ceased to be clerk in 1862, though I cannot positively say.

Int. 11. State whether or not Mr. Toomey leased the cellar to any other person after you left.

172 Ans. That I could not say of my own knowledge, only from what I heard.

Int. 12. Who first occupied it after you left, under Toomey or any other clerk?

(Objected to.)

Ans. To the best of my recollection Mr. Racey occupied under Mr. Pierce Wesson.

Int. 13. State how long after you left the cellar it was that Mr. Racey occupied it.

(Objected to.)

Ans. Well, I could not state. It was but a short time. I don't think over a month or two, yet I am not positive even of that.

Int. 14. Have you been in the cellar since Mr. Racey occupied it? If so, when? State as near as you can.

Ans. Well, I don't think I have been into it in three or four years. Not that I remember.

Int. 15. For what purpose did you occupy it during the last three or four years that you had it?

(Objected to.)

Ans. Storing the oysters.

Int. 16. When and how long was the ice-box of Mr. Dean that you speak of in the cellar?

(Objected to.)

Ans. That is eight or ten years ago. I could not fix the year. When I come to think of it, it must have been twelve or fifteen years, any way.

Int. 17. During the last two or three years that you occupied this cellar, what, if anything, was left or stored in the cellar by the clerk of the market?

Ans. Nothing in my part; the cellar was separated by a partition, with two separate entrances.

Int. 18. When was that partition put up, and who put it up?

(Objected to.)

Ans. I put it up.

Int. 19. When?

173 Ans. Well, sir, as near as I can remember it was along in the year 1839.

Cross-examined, de bene esse, without waiving the objections to the direct interrogatories:

Cross-int. 1. If I rightly understand you, you do not pretend to state the dates accurately in any of the answers that you have heretofore given?

Ans. Well, no; only from recollection, with the exception of that partition.

Cross-int. 2. Is your recollection of the dates sufficiently accurate to enable you to state them positively?

Ans. No; nothing more than from memory.

Cross-int. 3. Do you remember a large ice-box that Mr. Racey had in his stand next to yours?

(Objected to.)

Ans. I think I remember of a box being there. I remember there being an ice-box there; but I think it was there when he took possession of the premises, yet I am not positive.

Cross-int. 4. About how large was it?

Ans. I don't think it could have been over twelve feet in length. I should think it was in the neighborhood of five or six feet high.

Cross-int. 5. Do you remember his counting-room, stained-glass partition, etc.?

Ans. Yes.

Cross-int. 6. Did you ever see the ice-box that was behind that partition?

Ans. Perhaps I may have seen it forty times, but I have no recollection of having seen it.

THOMAS WOOD.

174 *Deposition of Gilson Carman, taken, subscribed, and sworn to before R. E. Stilwell, examiner.*

GILSON CARMAN, called and sworn as a witness on the part of the complainant, deposes and says.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Gilson Carman; my age is thirty-seven; residence, 74 Bedford avenue, Brooklyn, E. D.; my occupation, fish business.

Int. 2. How long have you been engaged in the fish business, and where?

Ans. Fourteen years; at 70 Fulton Market, in the city of New York.

Int. 3. What firm are you now a member of, and how long have you been a member of that firm in this business?

Ans. Middleton, Carman & Co. I have been a member of that firm nine years.

Int. 4. What other firm have you been a member of in the fish business, and how long, and where?

Ans. William M. Rogers & Co. I was a member of that firm five years; their place of business was 70 Fulton Market.

Int. 5. What is the character of your business—wholesale or retail?

Ans. Retail fish business.

Int. 6. Do you know Enoch Piper, the complainant in this case; and, if yea, how long have you known him?

Ans. I have known him since January, 1859.

Int. 7. Do you know the respondents in this case, Brown and Seavey; and, if yea, how long?

Ans. I knew them ten years.

Int. 8. Have you received from the complainant in this case fresh fish in a frozen state at any time out of season? Meaning by the words "out of season," a season of the year different from that in
175 which they are caught. If yea, state when you received any such fish from the complainant, and to what extent since.

Ans. Yes. The first fish in this condition, which was salmon, I received on December 30, 1858. That was the first case, and the balance in January, 1859. Every year since we have received fish in that condition, all the way from October to May; we have received from 1,000 lbs. to 50,000 lbs. in that condition a year.

Int. 9. Have you received from the complainant any other kind of fish or animal substances in a frozen state; and if so, what?

Ans. Fresh mackerel, trout, partridges, shad.

Int. 10. Whether or not a freezing-apparatus of any kind was put up by you under the superintendence of this complainant in the city of New York?

Ans. Yes.

Int. 11. How many freezing-apparatuses?

Ans. Two.

Int. 12. State when and where each was put up.

Ans. One in the fall of 1861, at 134 Beekman street; the other in May, 1862, in the same place.

Int. 13. Are they both still in use?

Ans. Only one of them.

Int. 14. State which one is in use, and what has become of the other.

Ans. The one put up in May, 1862; the other one was taken down after the second was put up.

Int. 15. How long after the second one was put up that you took down the first one?

Ans. The pans, or sink, were taken out immediately, but the walls were used some time afterwards.

Int. 16. Describe the first one put up, giving its dimensions and manner of use as nearly as you can.

Ans. It was a cast-iron pan, rigged on the top with a lead pipe attached to carry off the pickle. It was three feet deep, three in width, and about six in length. This is the interior measurement of the box.

There were two small pans, about two feet long each and about
176 ten inches wide, and about ten inches deep. There were two lids at the top, the same as any common refrigerators. The first one was a common refrigerator before those pans were put in.

Int. 17. Was this a temporary apparatus or intended for a permanent one?

(Objected to, as to form and substance.)

Ans. Temporary.

Int. 18. State how it was used.

Ans. We put ground ice and salt in the pans, and placed salmon inside, to keep them in a frozen state.

Int. 19. Was there any contact between the ice and the salt in the pans and the air of the chamber where the salmon were placed when the freezer was in operation?

(Objected to, as to form and substance.)

Ans. It was not perfectly air-tight, though intended to be so; and the air could come in contact with the ice.

Int. 20. To what extent did the air of the preserving-chamber come in contact with the ice and salt?

(Objected to, as to form and substance.)

Ans. To a very trifling extent.

Int. 21. What means did you take to prevent the air of the preserving-chamber from coming into contact with the ice and salt in the pans, in operating the freezer?

(Objected to, as to form and substance.)

Ans. By placing woolen cloths where the air was likely to get into the box; on top of the pans, and under the cover.

Int. 22. When the lids of the freezer were closed, state whether or not the upper edges of the pans were in contact with the lids.

(Objected to, as to form and substance.)

Ans. They were.

Int. 23. With reference to the upper edges of the pans and the lids of the freezer, where were the cloths placed which you have mentioned?

(Objected to, in form and substance.)

Ans. The cloths were placed over the pans, and around the pans where they projected into the box.

177 Int. 24. Where did the pipe that you have mentioned commence and where did it terminate?

(Objected to, as to form and substance of question.)

Ans. The pipes commenced at the end of the pans and terminated at the bottom of the box, one to each pan. The pipes ran into one before going into the bottom of the box.

Int. 25. Where was the lower end of the combined pipe?

(Objected to, in form and question.)

Ans. It was in the ice-box, about six inches from the bottom.

Int. 26. How was this freezer drained?

(Objected to, as to form and substance.)

Ans. It was drained by a pipe running through the middle of the bottom of the box.

Int. 27. State for what purpose you used this box.

Ans. For keeping the salmon in a frozen state after they arrived.

Int. 28. What was the condition or state of the salmon when they were put in?

Ans. Partially frozen, and their condition good.

Int. 29. Now, give a description of the second freezer, constructed in May, 1862, as you have stated.

(Objected to, as to form and substance.)

Ans. It was about sixteen feet long, eight feet in height, and from six to seven feet in width. A compartment was put into the second freezer, or partition, which made two chambers with two doors. The door of one was about three feet from the bottom, and about eighteen inches square. The second door was two feet from the bottom of the box, twenty inches in width, twenty-six to twenty-eight inches in depth. Between the walls the packing was about ten inches; it was constructed with perpendicular pipes running into horizontal pipes; the pipes were from six to eight inches in diameter; they projected in the pans above; it was fed from the top; it has lids on the top, also packed.

Int. 30. How many perpendicular pipes were in the freezer, and how were they situated with reference to the doors?

(Objected to, as to form and substance.)

178 Ans. Eight perpendicular pipes. The door was in the middle, and the pipes were placed at each side of the door.

Int. 31. How far apart were the perpendicular pipes from each other?

(Objected to, as to form and substance.)

Ans. About twenty-two inches; eight to ten inches from the partition.

Int. 32. What other pipes were there in the freezer besides the perpendicular pipes?

(Objected to, as to form and substance.)

Ans. Two horizontal pipes in each compartment.

Int. 33. How many perpendicular pipes are there in the entire freezer?

(Objected to, as to form and substance.)

Ans. Sixteen.

Int. 34. How are the perpendicular pipes situated in the freezer with regard to the horizontal pipes you have named, and how are they connected?

(Objected to, as to form and substance.)

Ans. There is an eight-inch perpendicular pipe soldered into the horizontal pipe into which the perpendicular pipes set in.

Int. 35. How many of those eight-inch perpendicular pipes are there?

(Objected to, as to form and substance.)

Ans. Sixteen.

Int. 36. State what you mean by eight-inch perpendicular pipe, whether the eight inch applies to its diameter, its height, or what.

(Objected to, as to form and substance.)

Ans. Its height.

Int. 37. How many pans are there in the freezer, and where situated?

(Objected to, as to form and substance.)

Ans. Two to each compartment, and situated on top of the box.

179 Int. 38. Are these pans connected with the perpendicular pipes? If yea, state how.

(Objected to, as to form and substance.)

Ans. They are connected the same as the horizontal pipes. There is a flange connected with the pans, which sets in the perpendicular pipes.

Int. 39. Will you state the manner of using the freezer; what freezing-mixture you used, and the manner of using it, etc.?

(Objected to, as to form and substance.)

Ans. We use ground ice and salt-mixture, and place it in the pans above, in the top of the box. It is drained from the horizontal pipe or pipes. Fish of all descriptions are placed in the chamber.

Int. 40. State the manner of placing them.

Ans. We hang them up; lay them down; we likewise place them in boxes and barrels.

Int. 41. When the freezer is in operation, what do the pans, the perpendicular pipes, and the horizontal pipes contain?

(Objected to, as to form and substance.)

Ans. The pans contain ground ice and salt; the perpendicular pipes also; the horizontal pipes ground ice, pickle, and salt.

Int. 42. How is the pickle drained from the horizontal pipes and the perpendicular pipes?

(Objected to, as to form and substance.)

Ans. It passes through the perpendicular pipes into the horizontal pipes, and then is drained from the top of the horizontal pipes.

Int. 43. How is the apparatus charged with ice and salt?

(Objected to, as to form and substance.)

Ans. It is charged from the top of the freezer with ground ice and salt put into the pans.

Int. 44. How are the pans covered?

(Objected to, as to form and substance.)

Ans. They are covered with a lid each, packed with pulverized charcoal.

Int. 45. State whether or not there is any contact between the freezing-mixture of ice and salt and the pickle in the pans, horizon-
180 tal pipes, and perpendicular pipes, and the air of the interior chambers, where the fish are placed when the freezer is in operation.

(Objected to, as to form and substance.)

Ans. No contact.

Int. 46. Is there any contact, when the freezer is in operation, of the freezing-mixture of ice and salt with the external air?

(Objected to, as to form and substance.)

Ans. No contact.

Int. 47. Of what material were the pans, perpendicular pipes, and horizontal pipes, made?

(Objected to, as to form and substance.)

Ans. Galvanized iron.

Int. 48. When the freezer was in operation, state the position of the fish placed in the freezing-chamber, as to quantity?

(Objected to, as to form and substance.)

Ans. We put the fish promiscuously all over the chamber—in all parts alike.

Int. 49. State whether or not you have placed fresh fish in an unfrozen state in that freezer, and in what condition you found them afterwards, as to being frozen or unfrozen?

(Objected to, as to form and substance.)

Ans. I have. They came out in a good condition and frozen state.

Int. 50. Was there any difference in the condition of the fish in that particular taken from different parts of the chamber?

Ans. No difference. Fish of uniform size freezes all over alike.

Adjourned to Saturday, March 27, 1869, at 9 o'clock.

MARCH 27, 1869.

Counsel for both parties present.

Examination of Gilson Carman resumed, on the behalf of the complainant.

Int. 51. When your freezing-apparatus is in operation, what is the appearance of the inside pipes?

181 (Objected to, in form and substance.)

Ans. Coated with frost.

Int. 52. State how the horizontal pipes of the apparatus are cleaned.

(Objected to, as to form and substance.)

Ans. It is cleaned by the lower hole, with a large reed pole or iron rod.

Int. 53. Where is the lower hole which you speak of situated with reference to the horizontal pipes, and state the manner of using it?

(Objected to, as to form and substance.)

Ans. In front of the freezer. In cleaning it, it is necessary to have the rod as long as the horizontal pipe.

Int. 53½. How is the rod you speak of used in cleaning? State particularly.

(Objected to, as to form and substance.)

Ans. By working the rod backwards and forwards through the pipe until it is cleaned.

Int. 54. State whether or not the pans are fastened to the tops of the perpendicular pipes or are removable?

(Objected to, as to form and substance.)

Ans. They are removable.

Int. 55. Have any alterations been made in your freezing-apparatus since its completion in May, 1862? If yea, state what.

(Objected to, as to form and substance.)

Ans. There has been a hole put in the top of the horizontal pipe and the bottom one closed up, for the pickle to rise to flow out of the top hole.

Int. 56. When was that done?

(Objected to, as to form and substance.)

Ans. About six months after the completion of the ice-box; it was during the year 1862.

Int. 57. Were there any outlet-pipes—small pipes inserted in the horizontal pipes—at the holes you speak of? If so, give their dimensions as near as you can.

(Objected to, as to form and substance.)

182 Ans. Two small lead pipes to each horizontal metallic pipe. The small lead pipes passed through the wall of the refrigerator. The top one flowed into the gutter outside.

Int. 58. Were any other alterations made besides what you have described in the freezer after its completion?

(Objected to, as to form and substance.)

Ans. Not any.

Int. 59. Who superintended the building of your freezer?

(Objected to, as to form and substance.)

Ans. Mr. Enoch Piper, Camden, Maine.

Int. 60. Is it still in use by your firm—Middleton, Carman & Co.—and have they used it since its completion?

(Objected to, as to form and substance.)

Ans. It is. They have used it since its completion.

Int. 61. During that time who has had the care and charge of it?

(Objected to, as to form and substance.)

Ans. Myself and assistant.

Int. 62. Will you state how you fix the date when your firm first received from Mr. Piper salmon preserved in a frozen state in December, 1858, and January, 1859?

(Objected to, as to form and substance.)

Ans. From our book-accounts.

Int. 63. How do you fix the date when your preserving-apparatus or freezer was constructed in May, 1862, as stated?

(Objected to, as to form and substance.)

Ans. By our book-accounts.

Int. 64. What was the expense of building that freezer?

(Objected to, as to form and substance.)

Ans. $224\frac{32}{100}$. The plumber's bill was $109\frac{82}{100}$, and the carpenter's bill $100; sawdust $14\frac{50}{100}$.

Int. 65. Of what other material besides galvanized iron was that apparatus constructed?

(Objected to, as to form and substance.)

Ans. The walls were constructed of fine lumber; there was lead pipe; the walls were packed with sawdust and the lids with pulverized charcoal.

183 Int. 66. How were the ice and salt prepared for use in the freezer?

(Objected to, as to form and substance.)

Ans. The ground ice and salt are mixed properly together before putting in the pans in the top of the refrigerator. The ice is ground in a machine.

Int. 67. When you received your first frozen salmon from Mr. Piper with what firm were you connected?

(Objected to, as to form and substance.)

Ans. William M. Rogers & Co.

Int. 68. When did that firm dissolve, and what firm succeeded them, if any?

(Objected to, as to form and substance.)

Ans. About the year 1860; and Middleton, Carman & Co. succeeded them.

Int. 69. State whether or not, prior to receiving frozen salmon in December, 1858, and January, 1859, as you have stated, your firm had received from any source fresh salmon preserved in a frozen state out of season, or any other fish preserved in a frozen state out of season.

(Objected to, as to form and substance.)

Ans. Not any; no fish artificially frozen.

Int. 70. What kinds of fish did W'm M. Rogers & Co. deal in prior to receiving the first frozen salmon from Mr. Piper, while you were connected with that firm?

(Objected to as to form and substance.)

Ans. All kinds of fresh fish in New York market and vicinity.

Int. 71. At what seasons of the year prior to the firm of W'm M. Rogers & Co. receiving the frozen salmon from Mr. Piper, were fresh salmon bought and sold in the New York markets by that firm?

(Objected to, as to form and substance.)

Ans. From the 1st of April to the 1st of September. We received it in February from Europe, likewise in October and November from Europe.

Int. 72. What was the extent of the business of the firm of W'm M. Rogers & Co., as compared with other retail fish-dealers and
184 firms in the city of New York, while you were connnected with said firm?

(Objected to, as to form and substance.)

Ans. The largest retail dealers in New York, or in the United States, in fresh fish.

Int. 73. What has been, and is, the extent of the business of the firm

of Middleton, Carman & Co., to which you belong, as compared with other retail fish-dealers in New York and vicinity?

(Objected to, as to form and substance.)

Ans. The largest in New York or the United States.

Int. 74. What amount would be the average of their business per annum since the firm was formed?

(Objected to.)

Ans. From $125,000 to $175,000 per annum.

Int. 75. What amount would be the average per annum of the business of W'm M. Rogers & Co., while you were connected with that firm?

(Objected to, as to form and substance.)

Ans. From $75,000 to $100,000.

Int. 76. What acquaintance have you with other retail fish-dealers and their business in New York and vicinity, and with the retail fish business generally, in the same locality, both now and since you have been in the business?

(Objected to, as to form and substance.)

Ans. I am acquainted with about every first-class retail fish-dealer in the city of New York for ten years or more.

Int. 77. State, generally, what parties in the city of New York and vicinity the firm of Middleton, Carman & Co. have been accustomed to supply with fresh fish.

(Objected to, as to form and substance.)

Ans. Hotels, restaurants, steamboats and steamships, private families, both in New York and Brooklyn; retail fish-dealers, when the market is short of fish, or not fully supplied.

Int. 78. What was the amount of frozen salmon received in December, 1858, and January, 1859, from Mr. Piper, as you have stated?

(Objected to, as to form and substance.)

185 Ans. About 300 lbs.; from 300 to 400 lbs.

Int. 79. When did the firm of Rogers & Co. next receive frozen salmon from Mr. Piper after January, 1859?

(Objected to, as to form and substance.)

Ans. In the fall and winter of 1859.

Int. 80. And to what extent?

(Objected to, as to form and substance.)

Ans. 400 lbs. or more.

Int. 81. What was the price of frozen salmon per pound received in the New York market in December, 1858, and January, 1859?

(Objected to, as to form and substance.)

Ans. The retail price was about one dollar per pound. The cost price, landed in New York, was seventy cents per pound, for 1858 and 1859.

Int. 82. Up to how late a date in the winter and spring of 1859 and 1860 did you receive salmon from Mr. Piper artificially frozen?

(Objected to, as to form and substance.)

Ans. It was all received in the fall and winter of 1859, or the commencement of 1860.

Int. 83. What were the average prices of fresh salmon in the New York markets unfrozen, sold in their season, during the years 1859 and 1860?

(Objected to, as to form and substance.)

Ans. The retail price was thirty to thirty-five cents, and the wholesale price about twenty-five cents.

Int. 84. State whether, or not, subsequent to the year 1859, your pur-

chases of salmon, artificially frozen, from Mr. Piper, increased in amount, or not, and to what extent.

(Objected to, as to form and substance.)

Ans. It increased from the amount I have already stated to 52,000 pounds per annum.

Int. 85. In what season or year did your firm receive the largest amount of frozen salmon from Mr. Piper? State the precise amount if you can.

(Objected to, as to form and substance.)

Ans. It was in the latter part of 1867 and the early part of
186 1868. The largest portion was received in the latter part of 1867. The number of pounds was 52,514.

Int. 86. What was the amount received in the season of 1866–7?

(Objected to, as to form and substance.)

Ans. Six thousand pounds of salmon at fifty cents per pound, and some shad. I don't know how many.

Int. 87. What was the average price of frozen salmon in the season of 1866–7, in the New York markets?

(Objected to, as to form and substance.)

Ans. The cost price averaged about sixty cents per pound; retail seventy-five to eighty cents per pound.

Int. 88. What was the average price of frozen salmon in the season of 1867–8, in the markets of New York? Also for the season of 1865–6, 1864–5, 1863–4, 1862–3, 1861–2, and 1868–9?

(Objected to, as to form and substance.)

Ans. The net price of salmon, wholesale, in 1867–8, was twenty-five cents per pound, all expenses having been deducted; retail forty-five cents: for 1865–6, net sixty cents per pound, wholesale; retail seventy-five cents per pound: for 1864–5, eighty cents net, wholesale, per pound; retail, one dollar per pound: in 1862–3, the wholesale net price was fifty cents per pound; retail, sixty to seventy-five cents per pound; the prices in 1861–2 were about the same as in 1862–3; in 1868–9, wholesale, net fifty cents for the greater part; retail, sixty-two and one-half to seventy-five cents per pound. Average price 1863–4, from sixty to seventy-five cents, most of it seventy-five cents.

Int. 89. Have your firm ever received preserved salmon in a frozen state, artificially frozen, out of season, from any other parties? If so, from whom and when first did you receive any?

(Objected to, as to form and substance.)

Ans. We have received frozen salmon from Messrs. Brown & Seavey, the respondents, in the fall of 1867.

Int. 90. Have your firms received any frozen salmon from any other parties?

(Objected to, as to form and substance.)

Ans. No others, except from Mr. Piper.

187 Int. 91. State the amount received from Brown & Seavey, as near as you can.

(Objected to, as to form and substance.)

Ans. Five hundred pounds, more or less.

Int. 92. Is that all that your firms have received from them at any time?

(Objected to, as to form and substance.)

Ans. That is all, except some fresh mackerel in a frozen state.

Int. 93. When did you first learn of other parties, besides your firms and Mr. Piper, furnishing fresh salmon preserved in a frozen state, artificially frozen, or any other fish preserved in a frozen state, artificially frozen, to the New York markets?

(Objected to, as to form and substance.)

Ans. I first learned that frozen salmon had been furnished from Brown & Seavey in 1867, and striped bass and Spanish mackerel from J. H. Racey in the fall of 1865, as near as I recollect.

Int. 94. Will you state a date prior to which no preserved fish of any kind, in a frozen state, artificially frozen, were furnished to and exposed for sale in the New York markets, out of season, except what were obtained from Mr. Piper or parties who obtained from him?

(Objected to, as to form and substance.)

Ans. I have never known of any prior to 1864, sold in New York.

Int. 95. What means had you of knowing that fact? State fully and generally.

(Objected to, as to form and substance.)

Ans. By being one of the largest retail dealers, and always having the first of everything in the market in the fresh fish line; and coming in contact every morning with other retail dealers in the wholesale fish-market.

Int. 96. Have your firms ever received any Spanish mackerel out of their season, in an artificially frozen state, from Mr. Piper? If so, when, and state the circumstances under which you obtained them.

(Objected to, as to form and substance.)

188 Ans. Yes, in the fall of 1861, the firm of William M. Rogers & Co. received such mackerel. We sent them down to Enoch Piper, to Camden, Maine, in September, 1861, to be frozen. Mr. Piper returned them in October in a frozen state, and they were retailed at one dollar per pound. They were in good condition.

Int. 97. Why did you send them to Enoch Piper to be frozen?

(Objected to, as to form and substance.)

Ans. Because there was no other way to get them frozen, and he being the only man at that time who adopted this process, we sent them to him.

Int. 98. When did you become a member of the firm of Middleton, Carman & Co.?

Ans. In 1863. I was mistaken yesterday in saying that the firm of William M. Rogers & Co. dissolved in 1860. It was in 1863.

Int. 99. State about when you became a member of the firm of W. M. Rogers & Co.

Ans. It was fourteen years ago the first of last January; it was January 1, 1855.

Int. 100. Do you know Joseph H. Racey, jr., fish dealer in Centre Market, New York, and his brother, William H. Racey, former fish-dealer in Centre Market? And state how long you have known them, and in what way.

Ans. I am acquainted with Joseph H. Racey, and have been for fi'teen years. I have known him by seeing him down at the wholesale market buying fish. I have sold him fish at different times. I never had any acquaintance with his brother.

Int. 101. How long have you known Joseph H. Racey as a fish-dealer in Centre Market, and have you seen his stand there?

Ans. I have known him for fifteen years or more in Centre Market as a fish-dealer; I have not seen his stand there until about three years ago, as I had no occasion to go there.

Int. 102. State whether or not the firm of W'm M. Rogers & Co. received from Joseph H. Racey, or his brother, any frozen or partially frozen Spanish mackerel in or out of season in the years 1856, 7, and 8, or in any year while you were a member of that firm.

(Objected to as to form and substance.)

189 Ans. William M. Rogers & Co. never received any Spanish mackerel, frozen or partially frozen, from Joseph H. Racey or his brother while I was a member of that firm.

Int. 103. Have you, as member of either of the firms you have spoken of, ever sold any fish in an artificially frozen state to Joseph H. Racey? If yea, state where you sold or delivered them to him, and when, as nearly as you can; and under what circumstances; and what kind of fish.

(Objected to, as to form and substance.)

Ans. I have sold frozen fish to Joseph H. Racey, directly and indirectly, in New York, since 1860. We sold the fish out of our store-house to him. The fish came out of the refrigerator. They were frozen salmon. I think we have sold him frozen striped bass out of the refrigerator of 1862. I likewise have sold him frozen salmon out of the temporary refrigerator which was fitted up in 1861.

Int. 104. State what you mean by the refrigerator of 1861 and of 1862. Whether you mean the apparatus you have already described. State where they were.

Ans. They are the two refrigerators already described—one ice-box, and one refrigerator.

Int. 105. State whether or not Mr. Racey has seen the freezing-apparatus described by you as having been constructed, in May, 1862, at 134 Beekman street. If so, who was present, and how long was it after it was put up?

(Objected to, as to form and substance.)

Ans. I have been present when Mr. Racey saw this freezing-apparatus; likewise our workmen. This was from six to twelve months after it was put up.

(Adjourned to Tuesday morning, March 30, 1869, at 9 o'clock.)

TUESDAY, *March* 30, 1869.

Present, counsel for respective parties.

(Adjourned to Wednesday, March 31, 1869, at 9 a. m.)

190 WEDNESDAY, *March* 31, 1869.

Present, counsel for the respective parties.

Examination of GILSON CARMAN resumed:

Int. 106. Has Mr. Racey ever seen the temporary freezing-apparatus described as having been constructed by you in the fall of 1861? If yea, state who was present, and the circumstances under which he saw it.

(Objected to, as to form and substance.)

Ans. He has seen it when I have been present. I gave him fish out of it.

Int. 107. What was the condition of the fish you gave him out of it, as to being frozen or unfrozen?

(Objected to, as to form and substance.)

Ans. The condition was comparatively good, and the fish were in a frozen condition.

Int. 108. Were the fish that you delivered him delivered in or out of the season of their catch, and what kind of fish were they?

(Objected to, as to form and substance.)

Ans. Out of season. Frozen salmon.

Int. 109. State whether or not Mr. Racey saw the interior of the tem-

porary freezing-box at that time, and if yea, state how you know that he did.

(Objected to, in form and substance.)

Ans. He saw the top part of the box. He could not help seeing it when it was open. He saw it open.

Int. 110. Did Mr. Racey receive any frozen fish from you from your freezer in Beekman street, built in 1862?

(Objected to, as to form and substance.)

Ans. He did, several times.

Int. 111. Who delivered the fish to him, what kinds of fish, and did he see the interior of the apparatus? If yea, state how you know.

(Objected to, as to form and substance.)

191 Ans. I delivered the fish to him. They were fresh salmon, and, I think, striped bass. He saw the apparatus open.

Int. 112. When the freezer was open were the perpendicular pipes inside visible?

(Objected to, as to form and substance.)

Ans. They were.

Int. 113. When first in the New York markets were fresh fish sold out of their season, that had been artificially frozen, but were unfrozen when sold, except what fish had been received from Mr. Piper, the complainant, or from parties obtaining them from him, directly or indirectly? State at what times, and what kinds of fish.

(Objected to, as to form and substance.)

Ans. Not any artificially frozen except from Mr. Piper.

Int. 114. When first in the New York markets were frozen fish, artificially frozen, sold out of their season, except what were received from Mr. Piper, the complainant, or from parties obtaining them from him?

(Objected to, as to form and substance.)

Ans. In 1864 or 1865, the first I ever had any knowledge of.

Int. 115. What kinds of fish were they, and who sold them?

(Objected to, as to form and substance.)

Ans. Spanish mackerel and striped bass. They were sold by Moore & Lamphier; not any others, to my knowledge, only from hearsay.

Int. 116. How do you know that artificially frozen fish, sold out of their season, in a frozen or unfrozen state, other than the frozen fish obtained from Mr. Piper, or from parties obtaining from him, were first sold in 1864 or 1865 in the New York markets?

(Objected to, as to form and substance.)

Ans. By being connected with one of the largest retail dealers in fish in New York or any other State, and by coming in contact with almost all the other retail dealers in New York City every morning, except when I am out of town, that being the part of my business to buy and sell.

Int. 117. Did you, in February, 1868, or thereabouts see any
192 freezing-apparatuses belonging to J. H. Racey at Centre Market? If yea, who was with you?

(Objected to, as to form and substance.)

Ans. I did. Shown to me by Mr. Racey in Mr. Piper's presence. One of Mr. Racey's men opened the cellar.

Int. 118. Whereabouts were they located, and how many of them were they?

(Objected to, as to form and substance.)

Ans. They were under the market, in a cellar, about two-thirds of the way from Grand street, on the left-hand side of the market, going up; two in number; one opposite the door as you go in, the other on the right-hand side.

Int. 119. Next to what street is the entrance to the cellar?
(Objected to, as to form and substance.)
Ans. I suppose to be Centre street.
Int. 120. Who occupied the cellar?
(Objected to, as to form and substance.)
Ans. I suppose Mr. Racey did, as he had freezers, and key to get to it, etc.
Int. 121. About how old a man is Mr. Racey?
(Objected to, as to form and substance.)
Ans. About forty-five.
Int. 122. Was there any difference in the size of the freezers that you saw in the cellar? If so, state which was the smaller.
(Objected to, as to form and substance.)
Ans. There was a difference in the size. The smaller one was opposite the door as you go in. There was a slight difference in them.
Int. 123. Did you see the interior of each?
(Objected to, as to form and substance.)
Ans. I did.
Int. 124. Did you make any examination of them, as to appearance, size, and mode of working them?
(Objected to, as to form and substance.)
Ans. I examined them, but not particularly.
Int. 125. As to construction, what difference did you observe
193 between the smaller one and your freezer in Beekman street, built in 1862?
(Objected to, as to form and substance.)
Ans. No particular difference, except the drain-pipe. We had two, and he had one.
Int. 126. Whereabouts was the drain-pipe located in Racey's small freezer?
(Objected to, as to form and substance.)
Ans. In front of the freezer, about eighteen inches from the floor.
Int. 127. Where was the door to the freezer located with reference to the drain-pipe spoken of?
(Objected to, as to form and substance.)
Ans. In front; the same side as the drain-pipe.
Int. 128. Did you see any perpendicular or metallic tubes, inside the small freezer? If yea, how many?
(Objected to, as to form and substance.)
Ans. I did. I cannot tell how many, as the freezer was charged up; consequently the door could not be open long.
Int. 129. What was the shape of those perpendicular pipes as compared with the perpendicular pipes in yours?
(Objected to, as to form and substance.)
Ans. They were round, and a little larger than ours.
Int. 130. Any other difference?
(Objected to, as to form and substance.)
Ans. I did not notice any.
Int. 131. What is the diameter of the perpendicular pipes in your freezer at the top and at the bottom?
(Objected to, as to form and substance.)
Ans. One compartment, about six inches diameter top and bottom. The other compartment, ten inches to the top, eight inches to the bottom, about.
Int. 132. Like which set of pipes in your freezer were the pipes in Racey's freezer?
(Objected to, as to form and substance.)

Ans. The latter, as already described, as far as I saw. I suppose they were all alike.

194 Int. 133. What was said by Mr. Racey, if anything, at the time of your visit to his cellar, about his manner of cleaning the horizontal pipe in the small freezer? State fully.

(Objected to, as to form and substance, and if intended to contradict Mr. Racey, because his (Racey's) attention was not called to the conversation during the cross-examination.)

Ans. I do not recollect the conversation we did have on that fully. I think he said he cleaned it from the inside.

Int. 134. What else did he say about the freezer at that time, if you recollect, in any respect?

(Objected to, as to form and substance, and also for the reason stated in the preceding objection.)

Ans. He said it did not work as well as he wished it did, and he asked Mr. Piper if he could construct one for him, or something to that effect, or make some alterations in his.

Int. 135. Did you see the rear side of the small freezer? If yea, did you observe any drain-pipes there, and state what, if anything, was placed behind the freezer, and how near to it?

(Objected to, as to form and substance.)

Ans. I saw the rear; did not notice anything but a step-ladder used for charging the freezer and an eel-tank. The eel-tank was situated in the rear of Mr. Racey's cellar about thirty inches from the smaller freezer; and did not notice any pipes.

Int. 136. What was the diameter of the drain-pipe you have mentioned, as located in the front part of the small freezer?

(Objected to, as to form and substance.)

Ans. About one inch.

Int. 137. What difference in construction, if any, did you observe between Racey's large freezer and his small freezer?

(Objected to, as to form and substance.)

Ans. The pipes are constructed differently inside.

Int. 138. What was the difference, so far as you observed?

(Objected to, as to form and substance.)

Ans. The horizontal pipe was raised up further from the floor and the drain-pipe constructed a little different.

Int. 139. What drain-pipes were there in the large freezer, if any, and where situated?

195 (Objected to, as to form and substance.)

Ans. They are situated on the side as you go in, in front of the freezer; two in number, heavily coated with ice; so much so, that I saw nothing else.

Int. 140. On which side of the freezer were they located?

(Objected to, as to form and substance.)

Ans. On the side of the entrance to the freezer, where the door was.

Int. 141. How many horizontal tubes or pipes did you observe inside in each freezer?

(Objected to, as to form and substance.)

Ans. I cannot state the number, as there were boxes in the way, and as both freezers were in operation at the time I was there.

Int. 142. Where were the perpendicular pipes in both freezers located with reference to the door, as you look in?

(Objected to, as to form and substance.)

Ans. On the sides, on each side of the door.

Int. 143. Into what did these perpendicular pipes descend or enter at the bottom?

(Objected to, as to form and substance.)

Ans. They descended into the horizontal pipes.

Int. 144. How many horizontal tubes or pipes were there in the small freezer?

(Objected to, as to form and substance.)

Ans. Two horizontal pipes.

Int. 145. How many drain-pipes were there to each horizontal tube or pipe in each freezer?

(Objected to, as to form and substance.)

Ans. One to each horizontal tube in the smaller one; and, as to the larger freezer, one to each horizontal tube, as far as I could see, as the ice obstructed the view.

Int. 146. How far from the top or bottom of the freezer were the drain-pipes to the horizontal pipes placed in the larger freezer?

(Objected to, as to form and substance.)

Ans. About two feet from the bottom, and about three feet six inches from the top, as near as I can recollect.

196 Int. 147. What did you observe in the larger freezer below the horizontal tubes or pipes that you have spoken of as being some distance above the bottom of the freezer?

(Objected to, as to form and substance.)

Ans. I noticed some perpendicular pipes below.

Int. 148. Into what did these last perpendicular pipes descend or enter?

(Objected to, as to form and substance.)

Ans. Into a horizontal pipe.

Int. 149. What was the size of the last-named perpendicular tubes or pipes, as compared with the size of the perpendicular pipes in the upper part of the larger freezer?

(Objected to, as to form and substance.)

Ans. I did not notice any particular difference in the size.

Int. 150. Did Mr. Piper see the interior of these freezers at that time?

(Objected to, as to form and substance.)

Ans. Yes.

Int. 151. For what purpose did you both go to that cellar?

(Objected to, as to form and substance.)

Ans. To see whether Racey was infringing on Mr. Piper's patent, or not.

Int. 152. What was the outside material of each of these freezers?

(Objected to, as to form and substance.)

Ans. Plain boards; do not know what kind of wood.

Int. 153. What difference, if any, did you observe in the external color or appearance of the two freezers?

(Objected to, as to form and substance.)

Ans. I did not discover any material difference.

Int. 154. Which had been the longer built, from their external appearance?

(Objected to, as to form and substance.

Question withdrawn.)

Int. 155. Were the freezers painted, or not?

(Objected to, as to form and substance.)

197 Ans. They were not, by the appearance.

Int. 156. What was the condition of the cellar as to dampness?

(Objected to, as to form and substance.)

Ans. It was what you may call a damp cellar.

Int. 157. Have you observed the effect of dampness and other influences upon unpainted boards, in boxes or freezers, during a lapse of time, or upon your freezer in Beekman street? If yea, what is it?

(Objected to, as to form and substance.)

Ans. I have.

Int. 158. State what it is.

(Objected to, as to form and substance.)

Ans. The appearance on the outside boards being more colored, and looks older, generally.

Int. 159. Suppose the smaller freezer in Mr. Racey's cellar had been constructed in 1859, and the larger freezer in the early part of 1867, and both kept in that cellar from the time they were constructed until you saw them, and both been kept in operation as freezers during the time since each was constructed, what, if any, would be the difference in their external appearance?

(Objected to, as to form and substance. Objected to, also, as calling for the opinion of the witness.)

Ans. The difference of their general appearance ought to be much greater than when I saw them together.

Int. 160. From the external appearance presented by the two freezers, how long, in your judgment, had one been constructed and used before the other?

(Objected to, as to form and substance, and for the additional reason stated in the next preceding objection.)

Ans. By the general outside appearance, I might think that they had been put up pretty nearly at one time.

Int. 161. Have you had any conversations with Mr. Racey, at any time, in regard to the time when he put up his first freezer, and used it at Centre Market?

(Objected to, as to form and substance; also objected to, on the ground that the attention of Mr. Racey has never been called to the conversation.)

198 Ans. I have.

Int. 162. State when it was, and the substance of the conversation, as fully as you can.

(Objected to, as to form and substance, and also for the reason stated in the last preceding objection.)

Ans. It was in Mr. Combs' dining-saloon, about one year ago, or thereabouts. He said he did not know when he put up his first freezer, —whether it was '61, or '62. It might have been later.

Int. 163. Was any one present at the conversation besides you and Mr. Racey?

(Same objection as to the preceding question.)

Ans. There was part of a dining-room full present, but no one to hear our conversation.

Int. 164. State the circumstances under which this conversation occurred, and how it came to be held.

(Same objection as to the preceding question.)

Ans. By the tenor of his conversation, they were taking his testimony in this case, or something to do with it. He came down to see me for the purpose, to see if I could not arrange with Mr. Piper in some way to get him out of his trouble, for Brown & Seavey had made a cat's paw of him. I told him I could not do anything for him. He would have to see Mr. Piper in reference to it.

(Answer objected to as inadmissible.)

Int. 165. What did you say to him, if anything, in reference to the time his first freezer was constructed, in regard to which he made the statements you have mentioned?

(Objected to, as to form and substance, and also for the reason stated in the objection to question 161.)

Ans. I told him he knew very well he did not put it up in 1861 or 1862. He said he could not tell what time he put it up. That was the answer he made. He was very much excited at the time, and said there was a carriage waiting for him to go up, as there was some more testimony to be taken. I advised him to see Mr. Piper first; that he would find him a very easy man to get along with, as long as he kept the truth on his side.

199 Int. 166. At the time you and Mr. Piper saw Mr. Racey's freezers at Centre Market, did Mr. Piper show Mr. Racey his patent or patents, and the drawings attached to the same, in your presence?

(Objected to, as to form and substance.)

Ans. He did; and he examined them on his marble slab.

Int. 167. State whether, or not, the firm of Rogers & Co., with which you were connected, at any time while you were connected with them, received from J. H. Racey, or from any parties at Centre Market with which he was connected, any fresh Spanish mackerel out of their season in an unfrozen state which had been artificially frozen.

(Objected to, as to form and substance, and also as calling for the opinion of the witness.)

Ans. Not to my knowledge.

Int. 168. State whether, or not, said firm, while you were connected with them, received out of the season of their catch, any fresh Spanish mackerel, unfrozen, from J. H. Racey, or parties connected with him in business in Centre Market.

(Objected to, as to form and substance.)

Ans. Not to my knowledge.

(Adjourned to April 1st, 1869, at 9 a. m.)

THURSDAY, *April 1st*, 1869.

Present, counsel as before.

The examination of this witness adjourned to the 3d inst., at 11 a. m.

SATURDAY, *April 3d*, 1869.

Present, counsel as before.

Int. 169. What acquaintance have you, if any, with wholesale dealers in fresh fish in New York City?

(Objected to.)

Ans. I am acquainted with them all.

Int. 170. Where are their places of business?

200 (Objected to.)

Ans. On South street, between Fulton and Beekman.

Int. 171. How far from Fulton Market?

Ans. It is one part of Fulton Market.

Int. 172. From whom are the markets and retail fish-dealers in New York City supplied with fresh fish in their season?

(Objected to.)

Ans. From the wholesale fish-market above stated, except what comes from Boston.

Int. 173. What dealings, if any, in fresh salmon, striped bass, and

Spanish mackerel, have either of the firms to which you have belonged had with J. H. Racey, jr., or parties representing him? If any dealings, to what extent, and how long?

(Objected to.)

Ans. We have sold him salmon, striped bass, directly and indirectly to him, for twelve years or more; but not to any very great extent.

Int. 174. Through whom have you had dealings with him, as stated, indirectly?

(Objected to.)

Ans. Moore & Lamphier.

Int. 175. What was the occasion, if you know, of your dealing with Mr. Racey indirectly through Moore & Lamphier?

(Objected to, as to form and substance.)

Ans. We thought their credit was better than his at that time; they were keeping a regular book account with him.

Int. 176. What is the mode of keeping fresh fish in the summer in New York?

(Objected to.)

Ans. By having them iced down properly.

Int. 177. What are they kept in?

(Objected to.)

Ans. Retail dealers keep them in their ice-boxes; and wholesale dealers in their original package they arrive in mostly.

Int. 178. How long can fresh fish be thus kept in good condition?

201 (Objected to.)

Ans. They keep them from three to twenty days; according to what kind they are.

Int. 179. How often, since you have been engaged in the fish business in New York, have you had occasion to visit the places of business of wholesale dealers of fresh fish in New York?

(Objected to.)

Ans. From three to five times per day while on duty.

Int. 180. Since you became connected as a member of either of the two firms you have named, have either of those firms met with any competition in the sale of preserved artificially frozen fresh fish sold out of their season in New York City or vicinity? If yea, state when the said firms first met with it, and from whom.

(Objected to.)

Ans. They did in the summer and fall of 1866 and 1867.

Int. 181. Will you refer to your answer to questions 3 and 98, and state whether you wish to make any explanation of them? If yea, please make it.

Ans. W'm M. Rogers virtually retired in 1861 from the firm of W. M. Rogers & Co.; but retained an interest for his name till 1866. The business has been carried on by Middleton, Carman & Co. since 1861.

Int. 182. Will you refer to your answers to questions 89, 91, and 92, and state whether you wish to make any correction? If yea, make it.

(Objected to.)

Ans. The corrections are that we commenced having frozen salmon from Brown & Seavey in 1866 and 1867. We had, in 1866, seven or eight hundred pounds, and in 1867 I could not state the quantity.

Int. 183. Will you refer to question and answer No. 16, and state whether you wish to make any explanation of your answer? If yea, please make it.

(Objected to.)

Ans. The ice-box, or refrigerator, had two pans at the top instead of one.

202 Int. 184. Please refer also to question and answer No. 30 and 33, and state if you wish to make any alteration; and, if so, do so. (Objected to.)

Ans. There were fourteen pipes instead of sixteen. Six in one compartment, and eight in the other.

Cross-examined by Mr. Avery, counsel for the defendants, de bene esse, waiving no objections to the interrogatories-in-chief:

Cross-int. 185. At what time was the business begun under the name of Middleton, Carman & Co.?

Ans. January 1st, 1866.

Cross-int. 186. Up to that time under what name had the business been conducted?

Ans. W. M. Rogers & Co.

Cross-int. 187. When did you become a member of that firm? State the year and month.

Ans. Fourteen years ago last January. It was in January, 1855.

Cross-int. 188. What department of the business did you take charge of when you first became connected with the firm?

Ans. Doing about all the buying, and a part of the selling.

Cross-int. 189. Who did the rest of the selling?

Ans. My partners.

Cross-int. 190. State who the partners were in the firm of W. M. Rogers & Co. who did the rest of the selling.

Ans. William M. Rogers, W. H. Middleton, and G. W. Middleton some. The latter acted as book-keeper most of the time.

Cross-int. 191. Did George W. Middleton keep the books from 1855 to 1860 inclusive?

Ans. No.

Cross-int. 192. Who did?

Ans. William H. Middleton looked after them some. George W. Middleton kept the books part of the time.

Cross-int. 193. Who kept the books the balance of the time, and during what years?

Ans. No one kept the books during the balance of the time be-

203 tween 1855 and 1860 except William H. Middleton and George W. Middleton.

Cross-int. 194. From 1856 to 1860, inclusive, do you mean to say that no one purchased fish for your firm other than yourself?

Ans. Yes; William M. Rogers purchased.

Cross-int. 195. Did you know every purchase made by William M. Rogers during that period, and do you now remember it?

Ans. I did not, and do not.

Cross-int. 196. Do you pretend to remember all the fish, of every kind, sold by your firm during that period?

Ans. No, I do not. I remember the greater part of them.

Cross-int. 197. Did you know, and do you now remember, all the persons of whom your firm purchased fish during that period, and the kinds of fish purchased of each individual?

Ans. I remember all the firms I purchased fish of, but cannot remember the time of purchasing all particular kinds of fish.

Cross-int. 198. Please answer the question propounded to you.

Ans. I remember all the firms we dealt with.

Cross-int. 199. Will you please answer the 197th question directly?

Ans. I know all the firms we purchased of.

Cross-int. 200. Why won't you answer the question?

Ans. I knew about every person we purchased fish of and dealt with. I remember the names of all the fish we dealt in, and about the name of every person we bought of.

Cross-int. 201. Do you wish to be understood as saying that no purchases, large or small, were made by any one of your firm during that period without your personal knowledge, and that you now remember all such purchases?

Ans. I do not remember all purchases. Sometimes I was called out of town to purchase myself, and my partners purchased in my absence.

Cross-int. 202. Do you now remember all the persons of whom you purchased fish individually during that period, whether the purchase was large or small, whether made from regular dealers or others?

204 Ans. I do not remember every individual at this present time.

Cross-int. 203. Do you for the years 1861 to 1865 inclusive?

Ans. I remember about all the firms I bought fish of, and nearly every person we dealt with.

Cross-int. 204. During the last period inquired of, that is from 1861 to 1865 inclusive, did other members of your firm make any purchases of fish besides yourself, and which of them?

Ans. They did. William M. Rogers, when he was in town; William H. Middleton, if I was out of town, and G. W. Middleton, if we happened to be all absent, which did not occur very often; that is, when the rest of the firm were absent.

Cross-int. 205. When such purchases were made, of course they were not known to you personally, were they?

Ans. Sometimes they were, and sometimes not, as we usually consult one another about the purchases.

Cross-int. 206. You don't mean to say that no purchases were made without consultation with all the members of the firm?

Ans. I do not.

Cross-int. 207. During the first period inquired of, from 1855 to 1860, what portion of the selling did you individually do?

Ans. I did about one-third of it when I was in town.

Cross-int. 208. How much of the time were you out of town during that period?

Ans. From two to three months of each year.

Cross-int. 209. What time of the year?

Ans. In July and August. Sometimes in the spring, April or May.

Cross-int. 210. What part of the selling did you do from 1861 to 1865 inclusive, and how much of the time were you absent during that period?

Ans. I did about one-third part when I was in town. During that period I was absent from two to three months yearly. In 1861 I might have been away nearly four months. In 1861 I think I went away in the latter part of March, and remained away until about the first of June; and as regards the other four years, generally about

205 two months or less in each year during the warm weather. I might have been away for two or three days in the winter on business.

(Adjourned to Tuesday, April 6, 1869, at 10 a. m.)

TUESDAY, *April* 6, 1869.

Present: Counsel for the respective parties.

Cross-int. 211. What arrangement was made between the firm of Will-

iam M. Rogers & Co. and the complainant as to receiving from and selling frozen salmon and other fish for him?

Ans. The first three or four years we bought them; the latter years we sold them for him on commission.

Cross-int. 212. State whether or not there was at first any agreement made by which you were to purchase all he froze.

Ans. No agreement nor understanding.

Cross-int. 213. State when the first arrangement terminated and the second began.

Ans. I cannot tell what year.

Cross-int. 214. State about what year.

Ans. From 1863 to 1865, or somewhere thereabouts, when he commenced to put in large lots of salmon.

Cross-int. 215. Has that arrangement been changed since?

Ans. It has not.

Cross-int. 216. State what that arrangement is, fully and particularly.

Ans. Selling them on commission, the same as any other dealer. The rate of commission is twelve and a half per cent.; and we charge him two and a half per cent. for icing what is sold by other parties, storing, and taking care of them.

Cross-int. 217. Are any fish sold by Mr. Piper that do not pass through your hands?

Ans. Yes.

Cross-int. 218. Are any sold by him in New York that do not pass through your hands?

Ans. Not to my knowledge.

206 Cross-int. 219. Is not that a part of the agreement between your house and Mr. Piper?

Ans. There was no agreement ever made with reference to the disposal of his fish to other dealers.

Cross-int. 220. Is there not a general understanding between you that he is not to send any fish into this market except what passes through your hands?

Ans. No.

Cross-int. 221. Is there any agreement or understanding between you by which you are to receive commissions of any kind on fish sent to New York by Mr. Piper which do not pass through your hands?

Ans. No.

Cross-int. 222. When you erected the apparatus in Beekman street, in 1862, what was the agreement in regard to it between you and Mr. Piper?

Ans. To store his fish in it.

Cross-int. 223. Is that all the agreement? Are you not at liberty to use it for other purposes besides storing his fish?

Ans. There was no agreement made in reference to it; but we took the liberty of putting in other fish, to make it pay storage, of course.

Cross-int. 224. Did he ever give you permission to freeze salmon in it?

Ans. He did.

Cross-int. 225. When, and upon what consideration?

Ans. It was about the fall of 1866 or 1867. We had more salmon come from Halifax than we could sell fresh. We wrote him for permission. He granted it. There was no arrangement made as to consideration. Whatever Mr. Piper asked we would pay him.

Cross-int. 226. Did he give you that permission as a continuing one, or only for a limited period?

Ans. Only for a limited period, for salmon.

Cross-int. 227. To what period was it limited?

Ans. Only for that time.

Cross-int. 228. Don't you remember which year it was—1866, or 1867?

207 Ans. I think it was 1867.

Cross-int. 229. Has he given you permission to freeze other fish than salmon in it?

Ans. We never had any agreement about it.

Cross-int. 230. Did you pay him anything for the privilege of freezing in 1867?

Ans. I don't think we ever settled with him for it.

Cross-int. 231. Have you ever paid him, or agreed to pay him, anything for the privilege of freezing any fish in it at any time?

Ans. We have agreed to pay him, but I don't think we have ever, to my knowledge, settled with, or paid him for it.

Cross-int. 232. What have you agreed to pay him, and when did you so agree?

Ans. There was no agreement made in reference to the price. I do not recollect the time the agreement was made.

Cross-int. 233. About when was it?

Ans. When we were putting in the fall salmon in 1866 or 1867.

Cross-int. 234. Was there ever any other agreement than that for the privilege of your using the apparatus for freezing?

Ans. No, not to my knowledge.

Cross-int. 235. You have used it, and now use it for that purpose, don't you?

Ans. We use it for freezing about six months, from September till April, or thereabouts. We have used it in warm weather, but seldom; one or two occasions since it has been put up.

Cross-int. 236. What was the external appearance of the first salmon that you received from Piper?

Ans. Most of them bright and handsome.

Cross-int. 237. How did they come back?

Ans. In a small box—in ice or snow.

Cross-int. 238. Were the fish covered with anything?

Ans. I think the most of them were coated with ice.

Cross-int. 239. About how thick?

Ans. From one-eighth to one-sixteenth of an inch.

Cross-int. 240. Was it the ice of water, or some mixture?

208 Ans. Ice of water.

Cross-int. 241. Any coated with gum, or other substances?

Ans. I don't think there was the first season.

Cross-int. 242. Did you ever receive any so coated?

Ans. We have.

Cross-int. 243. And covered with cloth?

Ans. I never recollect receiving any covered with cloth.

Cross-int. 254. In what year did you receive those coated with gum?

Ans. I think it was 1860 or 1861, if I remember the year. It might have been later.

Cross-int. 245. Were they so coated but one year, or several years?

Ans. The most of them for several years.

Cross-int. 246. Can you tell the last year they were so coated?

Ans. 1868.

Cross-int. 247. What proportion of them were coated with gum that year?

Ans. I should judge nearly one-half of them.

Cross int. 248. What proportion of those received by you from the second year you received any, down to this present time, were so coated?

Ans. I should think one-half of them, or more.

Cross-int. 249. Did you ever have any Spanish mackerel so coated?

Ans. Not to my knowledge.

Cross-int. 250. Or any other fish?

Ans. No.

Cross-int. 251. Are you positive the first lot you received were not so coated?

Ans. I am pretty positive.

Cross-int. 252. As a matter of memory, will you so state as a fact?

Ans. I do not think they were.

Cross-int. 253. Do you say "I do not think," in your last answer,
209 because you are not positive, and because you do not quite recollect?

Ans. I do not positively recollect; but I don't think they were, as some of them were coated with ice the first season.

Cross-int. 254. Were they coated with gum the second season?

Ans. I don't positively recollect; but I think most of them were coated with ice.

Cross-int. 255. Were any frozen fish received by you from any one else than Piper coated with gum?

Ans. I don't think there were.

Cross-int. 256. Were any coated with ice?

Ans. No.

Cross-int. 257. In the apparatus which you say was altered by you from a common ice-box, in 1861, at Beekman street, did you ever freeze salmon or any other fish?

Ans. Never froze any salmon. I remember putting one or two little fish on the pipes to see if it would freeze them.

Cross-int. 258. By pipes you mean the drain-pipes?

Ans. Yes; the drain-pipes.

Cross-int. 259. Did you ever put ice in the bottom of that box after it was altered?

Ans. I think I did.

Cross-int. 260. Lay the frozen fish on it, or mingle them with it?

Ans. I don't remember laying frozen fish on it; but I have unfrozen fish, and covered them up with the ice.

Cross-int. 261. What did you then have in the pans?

Ans. If I had anything it was ice and salt.

Cross-int. 262. Do you remember whether you had anything in them?

Ans. I cannot state positively; it is some time ago.

Cross-int. 263. Do you mean to say that you did not ordinarily use that box in this way—ice and fish packed in the chamber and ice and salt in the pans?

Ans. Not as a general thing; I might on some occasions, when we wanted to keep the fish a longer time.

210 Cross-int. 264. What do you mean by the last part of your last answer? Will you explain it?

Ans. I don't recollect positively about it.

Cross-int. 265. You had the general charge of it, did you not?

Ans. Myself and a help did.

Cross-int. 266. What help did you have there when it was built? Who afterwards assisted you in taking care of it?

Ans. I generally had two helps in the store-house.

Cross-int. 267. Who had you as helps at the time inquired of? Give their names.

Ans. A man by the name of Mr. Durie, Shields, Mr. Fausett, who drove the wagon and used to assist in the store-house some. These are all the names I remember. There might have been more.

Cross-int. 268. Have you spoken to Durie to be a witness here?

Ans. No.

Cross-int. 269. Who suggested to you the altering of that box?

Ans. I think Mr. Piper did, the second or third season we had salmon from him. He said he could arrange it to keep salmon in a frozen state longer than in ordinary ice-boxes.

Cross-int. 270. Did he tell you what alterations to make, and how to use it after altered?

Ans. He did.

Cross-int. 271. In your subsequent use of it, did you follow substantially his directions?

Ans. As near as I can recollect, I did.

Cross-int. 272. If I understand you, when you wanted to keep fish a long time, you used ice in the box with the fish and ice and salt in the pans?

Ans. Yes.

Cross-int. 273. Do you mean to say that you never so used it with frozen fish?

Ans. Not to my knowledge.

Cross-int. 274. Did you ever have ice in the box when frozen fish were in there also?

Ans. Not to my knowledge.

Cross-int. 275. What was the appearance, the general external
211 appearance, of frozen fish that you had received from other persons than Mr. Piper?

Ans. Some of them were bright and some rusty. I mean by rusty, a kind of red appearance.

Cross-int. 276. If that box would keep unfrozen fish longer when the fish were on the ice, why would it not operate in the same way with regard to frozen fish?

Ans. It would operate in the same way. It would be useless to use ice with frozen fish if we could get the chamber below freezing-point.

Cross-int. 277. Would it not be equally useless with unfrozen fish?

Ans. No.

Cross-int. 278. Will you fix the month and year when you remember to have sold fish out of that box to Joseph H. Racey?

Ans. The year of 1861. I cannot fix the month; for I do not think he had fish more than two or three occasions out of it. I only remember one occasion in particular.

Cross-int. 279. When was that?

Ans. One time he was very particular, and wanted to have one very bright salmon for a party. That was in the winter of 1861 or 1862.

Cross-int. 280. How do you know it?

Ans. By the time that the box was put up and arranged into a freezer, and how long it was used as such.

Cross-int. 281. Did you sell anybody else any salmon out of that box that day?

Ans. I don't remember any particular one.

Cross-int. 282. Did you that month—anybody that you can name?

Ans. Yes.

Cross-int. 283. Who was it; and what makes you remember it? What month was it?

Ans. It was I. D. Hitchcock, I think, as he was occasionally getting fish of us; and I remember his having fish out of that box. I do not remember the month.

212 Cross-int. 284. Did Racey pay you for that salmon when he got it?

Ans. I think he did.

Cross-int. 285. Do you know?

Ans. It is not usual to deliver fish without having them paid for. At that time he was paying us cash for what he bought.

Cross-int. 286. Do you mean to swear that he paid for it at the time? Do you remember the fact?

Ans. I mean to swear it was paid for at that time. I do not remember the fact, only that he was paying us cash at that time.

Cross-int. 287. How much did it come to? do you know?

Ans. I do not know.

Cross-int. 288. Why not?

Ans. It is unreasonable to expect to know it.

Cross-int. 289. Why so?

Ans. It has been too long a time to remember every dollar and cent he paid.

Cross-int. 290. Why should you not as readily remember the value of the thing sold as the purpose to which it was to be put and the person to whom it was sold?

Ans. It is more difficult to remember dollars and cents than it is to remember overhauling a dozen salmon or more to get one just such a size as Mr. Racey wanted, and the quality.

Cross-int. 291. Now, what was the size? State as a matter of memory—not a guess.

Ans. I don't remember the exact size.

Cross-int. 292. Can you approximate to it as a matter of memory—not as a guess?

Ans. From eight to twelve pounds.

Cross-int. 293. Now, as you remember the size, can't you tell us from that what it cost?

Ans. I think it was about eight or nine dollars.

Cross-int. 294. Why did you fix the weight from eight to twelve pounds? Why not from six to ten pounds?

Ans. We did not usually have fish weighing six pounds. It is very usual to have that size of Penobscot fish.

213 Cross-int. 295. That is the only reason, is it?

Ans. Yes.

Cross-int. 296. How long was it after you made this pretended sale to Racey that you recalled it to memory? How many years?

(Objected to.)

Ans. It was when I was first asked about it.

Cross-int. 297. When was that?

Ans. About a year ago.

Cross-int. 298. What part of the year 1862 was it that you finished and first used the apparatus now in use in Beekman street?

Ans. In the summer and fall.

Cross-int. 299. Do you mean by that July or August?

Ans. It was used by experimenting with it soon after it was finished in May, 1862. We never brought it into general use until September or October of the same year.

Cross-int. 300. Now, as a matter of fact, do you remember ever to have seen Joseph H. Racey inside that freezer?

Ans. No; not inside of the freezer.

Cross-int. 301. Did you ever see him inside of the door?

Ans. I never saw him inside of the door. I saw him in front of the door when it was open.

Cross-int. 302. Was it empty then?

Ans. No.

Cross-int. 303. What did you have in it?

Ans. Salmon, and I think some bass.

Cross-int. 304. Was it nearly full?

Ans. I don't think it was.

Cross-int. 305. Describe, as nearly as you can, how full it was.

Ans. Not more than half full.

Cross-int. 306. The door to which compartment was it that was open?

Ans. The first one as you go into the store, as near as I can recollect.

Cross-int. 307. Do you, in fact, recollect which one it was?

Ans. It might have been both of them, as he was in the habit of getting fish out of them.

214 Cross-int. 308. What do you mean by "the habit of getting fish out of them?"

Ans. When he could not get fully supplied in the wholesale fish-market he used to step up to our place, and if we had anything he wanted, that he could not find in the wholesale market, he used to purchase of us.

Cross-int. 309. Of course, everybody, who bought fish of you, went to the store-house, did they not?

Ans. No.

Cross-int. 310. But Racey did, whenever he bought of you?

Ans. Not every time.

Cross-int. 311. Did he, as a general thing?

Ans. If we did not have it over on our stand he would go over with myself or with one of the boys to get it out of the freezer.

Cross-int. 312. Why did he do that? would he not trust you to do it?

Ans. He is very particular, and would like to see what he was getting himself, and preferred picking out his own fish, as most retailers do.

Cross-int. 313. Could he not have done that at the stand after the fish were brought over?

Ans. He could; but he preferred going to the store-house, as we had no objection.

Cross-int. 314. Did he ever tell you he preferred to go there?

Ans. No, he never told me he preferred; nevertheless, he used to do it.

Cross-int. 315. Give the year and month of every time that you remember when Racey went to your store-room and received fish from the freezer in question.

Ans. In the fall and winter of 1862 and 1863. I cannot remember the exact month or day.

Cross-int. 316. Why don't you fix it in '64 and '65?

Ans. The most of the fish he had of us at that time was purchased by one of his men who drove a wagon. He was not himself doing all his marketing at that time—in '64 and '65. He used to send his orders down by his man.

215 Cross-int. 317. Is that the only reason?

Ans. That is the only particular reason.

Cross-int. 318. Do you remember at any time, from 1855 to 1860, that Racey owed your firm on account?

Ans. I don't remember; I did not keep the books.

Cross-int. 319. Have you the books that were used by the firm at that time?

Ans. I think we have.

Cross-int. 320. Who kept them?

Ans. William H. Middleton and George W. Middleton.

Cross-int. 321. How many times did you discharge Patrick Shields for being drunk and inattentive to his business?

Ans. I should think as much as half a dozen times.

Cross-int. 322. Did you ever discharge him for any other reason?

Ans. No, I did not.

Cross-int. 323. While he had charge of, or was connected with, your store-house, was any charge made against him of dishonesty, or while he was driving the wagon for your concern?

Ans. No; we never made any charge of dishonesty against him. He was as honest as the generality of boys are around the market. They nearly all take little privileges of their own, which we do not consider as theft; they take barrels when they are empty, and boxes.

Cross-int. 324. Did you ever suspect him of anything more than that?

Ans. No; we did not. I never suspected him more than that he took boxes and shad-roes, which they call their perquisites; I don't remember his carrying that on to such an extent as to be discharged for it.

Cross-int. 325. Do you know when he came back to you after he had been to the war?

Ans. I remember when he came back.

Cross-int. 326. What year was it?

Ans. I am pretty positive it was in the spring of 1863; I twitted him with "skedaddling," and he showed me his discharge.

(Adjourned to April 7, 1869, at 10 o'clock a. m.)

216 APRIL 7, 1869.

Counsel for the respective parties present.

Cross-examination of GILSON CARMAN resumed:

Cross-int. 327. You have said that you know all the various kinds of fish sold by retailers in New York at all seasons of the year; won't you tell me how many retailers there are in New York?

Ans. I cannot.

Cross-int. 328. How many are there in Centre Market?

Ans. I have always understood that there have been two there.

Cross-int. 329. Do you know whether there are any more or not?

Ans. No, I do not.

Cross int. 330. Do you know how many there are in Tompkins Market?

Ans. No, I do not know how many there are there. I have never been in the habit of visiting that market much.

Cross-int. 331. If any one of the retailers in Centre or Tompkins Market had preserved a few fish for their own business, of any kind, and sold them out of the season of their catch, would you have known that fact?

Ans. I would, soon after.

Cross-int. 332. Even though you did not know the parties' names, or that any such party existed?

Ans. I know the names of about all the dealers, but cannot place every market they are in. If they had any freezer I should know it.

Cross-int. 333. Nobody asked you anything about any freezer. Now, please answer the questions that was put to you directly. In the preceding questions I refer to fresh fish.

Ans. If they had frozen with ice, and salt mixed with the ice and fish, probably I should not have known it.

Cross-int. 334. Would you have known it if any retailer had preserved a dozen or so of fish for his own use by any process?

217 Ans. I might and I might not.

Cross-int. 335. When you put salmon which has been artificially frozen into the hands of your retail customers, are they in a frozen state or has the frost been taken out of them?

Ans. We sell them both frozen and unfrozen, as our customers want them.

Cross-int. 336. If nothing is said by the customer, and it is sold for consumption, off the stand, how is it, frozen or unfrozen?

Ans. We take the frost out enough to get the entrails out without breaking the fish. [If he is in the habit of buying of us, we send word to his cook to take the frost out before cooking.]

(The part of the above answer marked in brackets is objected to by counsel for the respondent as not being responsive.)

Cross-int. 337. Do you wish to be understood as saying that there could have been no fresh fish sold by any of the retail dealers in New York City during the past ten years, whether in large or small quantities, to consumers and not to other dealers, without such sale being known to you?

Ans. I do not.

Cross-int. 338. When you say, therefore, in your direct examination that no fresh fish has been sold by any retail dealer in New York during the past ten years, out of the season of its catch, do you mean to assert that as a fact embracing all the retailers of New York City?

(Objected to.)

Ans. About all of them.

Cross-int. 339. If you don't know the number of retail dealers in New York, how do you know it is about all of them?

Ans. I know by coming in contact with them almost every morning, as there is only one wholesale fish-market for them to come to in New York City.

Cross-int. 340. Do you wish to be understood as saying that you talk with every one of the retail fish-dealers in New York every morning, and that they tell you all the kinds of fish they sell, whether it be one or a dozen, so that you become acquainted with all their trade in its details?

218 Ans. I do not; it would be useless to think of such a thing.

Cross-int. 341. Did you talk with every one of them, as inquired of in the previous question, once a month?

Ans. No; the greater part of them I have talked with.

Cross-int. 342. Did those that you talked with tell you every kind of fish they dealt in, giving you the details of their business?

Ans. No; they did not tell me every kind, for I knew what was in season without asking the question.

Cross-int. 343. Except from conversation with the retail dealers had you any opportunity of personally knowing whether they did or did not sell a few fish to their customers out of the season of their catch?

Ans. Probably they might sell a few, but if they were in the habit of it I should know.

Cross-int. 344. Would you know it from personal knowledge or from hearsay?

Ans. I should know it from hearsay and from personal knowledge too.

Cross-int. 345. In what way would you obtain personal knowledge of the fact?

Ans. I visit Washington and Fulton Markets, and other markets would be from hearsay.

Cross-int. 346. From 1856 to 1867 how many times did you visit Centre Market during business-hours?

Ans. I could not state how many times; I did not make any account of it. I may have been six times and may have been a dozen.

Cross-int. 347. How many times did you visit Mr. Racey's stand during that time?

Ans. I generally saw Mr. Racey's stand when I went to the market.

Cross-int. 348. You are asked how many times you visited, not saw, his stand?

Ans. I do not know how many times, as I never made any account of it. I remember being there on three or four occasions.

219 Cross-int. 349. Do you mean to say that from 1856 to 1864 Mr. Racey did not sell out of the season of their catch fresh fish of any kind to his customers?

Ans. I could not say of my own knowledge, as he was buying frozen fish of us.

Cross-int. 350. Did you know of his selling any, as a matter of fact?

Ans. No; I do not know what he did with it.

Cross-int. 351. Now, do you know as a matter of fact, of your own knowledge, that he did not sell fresh fish out of the season of their catch which was not obtained from you from 1856 to 1864, inclusive?

Ans. No; I could not tell.

Cross-int. 352. What month and year was it that you visited Mr. Racey's freezer?

Ans. I do not know, as I made no minute of it.

Cross-int. 353. You have said that the freezers were charged up and partly full. How nearly full were they? What was there in them?

Ans. I should judge that both were about half full. I could not tell what was in them, as the contents were in boxes, most of it.

Cross-int. 354. What kind of boxes? How high?

Ans. They were boxes of different descriptions. I should judge they would hold from one hundred to one hundred and fifty pounds; from eight inches high to eighteen inches high, as near as I could judge, as I was outside the freezer.

Cross-int. 355. About how long was the door open for you?

Ans. About one minute.

Cross-int. 356. Were the contents placed round about the sides and rear, leaving a passage in the middle?

Ans. They were placed promiscuously about, as near as I can recollect.

Cross-int. 357. Did they obscure the view of any portion of the freezer?

Ans. They did.

220 Cross-int. 358. What portion?

Ans. The greater portion.

Cross-int. 359. Were the tubes or pipes covered with frost?

Ans. All that was visible was.

Cross-int. 360. Did you see the material of which they were made?

Ans. I don't recollect whether I did or no; for I could not see unless the frost was knocked off, which I do not remember.

Cross-int. 361. The doors were open but about a minute, and you were enabled to see only the upper parts of the pipes?

Ans. I saw the whole of the front pipe in each refrigerator, one on each side of the door.

Cross-int. 362. When the freezer is charged up you consume as little time as possible in taking anything out of it, don't you?

Ans. We do.

Cross-int. 363. From what source do you get your light into your freezer?

Ans. From the door.

Cross-int. 364. Always? Do you use any artificial light?

Ans. We use a candle when it is necessary to go in and stop for a while and keep the door closed.

Cross-int. 365. Is not that generally the case, the exception being that you desire to take out some one single article that you can readily put your hand on?

Ans. We do not take the candle in there unless we have to go in and stay for some time. The door when open gives light enough to pick out your fish without any artificial light in the day-time.

Cross-int. 366. The open door would also let in the warm air from the exterior, would it not?

Ans. It would let in warm air, more or less. The cold air from the freezer would keep it back somewhat.

Cross-int. 367. Now, please tell us if you would keep the door open all the time, if your freezer was charged up, while putting in 300 or 400 cwt. *weight* of fish.

Ans. We would.

221 Cross-int. 368. What year was it that you had the conversation with Mr. Racey at the eating-house?

Ans. Well, I think it was about a year ago.

Cross-int. 369. Was it summer or winter, spring or fall?

Ans. Well, I think it was in the spring; I am not positive.

Cross-int. 370. That is, you don't remember?

Ans. I don't remember the month. It was somewhere about a year ago.

Cross-int. 371. Was it in warm weather?

Ans. I can't tell whether it was warm or not.

Cross-int. 372. Was Mr. Piper here in New York?

Ans. No; he was away.

Cross-int. 373. Was it during last summer, while we were here taking testimony?

Ans. No; before that time, to the best of my knowledge.

Cross-int. 374. Have you given the exact language used by you both in that conversation, and the whole of it?

Ans. Only the sum and substance of it.

Cross-int. 375. Have you furnished to Mr. Piper or his counsel the names of any witnesses in this case?

Ans. I have; the young man who worked for us. His name is Fausett. I also spoke to Shields. I do not remember having spoken to Mr. Lamphier about coming here as a witness.

Cross int. 376. Have you at all aided and assisted Mr. Piper in getting up the case?

Ans. I have not; and have taken no interest in it until I heard part of Mr. Racey's testimony.

Cross-int. 377. Were you present during any part of Mr. Racey's examination?

Ans. No; I got my information as to what Mr. Racey had stated from Mr. Piper.

Cross-int. 378. Did you not furnish some interrogatories to counsel, or the substance of them?

Ans. What time?

Cross-int. 379. Any time?

Ans. I do not know how to answer it. I have answered all his
222 questions as correctly as I could. As to informing him about the case, I don't remember doing so.

Cross-int. 380. Have you had any communications with a Mr. Irish?

Ans. Mr. Irish has been down to see me to make inquiries where parties live.

Cross-int. 381. What parties? Parties who were to be used as witnesses here?

Ans. I suppose that was the object.

Cross-int. 382. Do you believe that the result of this case will affect your interest or your business in any way?

(Objected to.)

Ans. I have not thought anything about it either way as to the effect

Cross-int. 383. Is that the only answer you can give to that question?

(Objected to.)

Ans. That is about the only answer I can call to mind.

Redirect:

Int. 384. Will you refer to question and answer 321 in your cross-examination, and state whether your answer applies to both the reasons stated in the question; and if not, to what reason?

Ans. It was inattention to business; the cause being tight or drunk overnight, as it was necessary for him to be to his business by four o'clock in summer and five in winter.

Int. 385. What was his inattention to business that you discharged him for?

Ans. He discharged himself part of the time, feeling ashamed to come to work. Then he used to come and ask us to take him back, and we did so.

GILSON CARMAN.

223 *Deposition of George W. Middleton, taken, subscribed, and sworn to before R. E. Stilwell, examiner.*

APRIL 7, 1869.

GEORGE W. MIDDLETON, being called as a witness on behalf of the complainant, was duly sworn. He deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. George W. Middleton; age, thirty-six; residence, Brooklyn, New York; occupation, fish-dealer.

Int. 2. Of what firm are you a member, and how long have you been such?

Ans. I am a member of the firm of Middleton, Carman & Co., since January 1, 1866.

Int. 3. Were you a member of the firm of William M. Rogers & Co.,

fish-dealers, Fulton Market, New York City; and if yea, from what time to what time?

Ans. I was a member of that firm from January 1, 1861, to December 31, 1865, when the firm named expired.

Int. 4. Were you connected with that firm in any way prior to January 1, 1861? If yea, state how and how long.

Ans. I was book-keeper for them from the spring of 1856 to 1861.

Int. 5. While you were a member of the firm of William M. Rogers & Co., and of Middleton, Carman & Co., what part of their business have you attended to?

Ans. Particularly to the financial part of it and the accounts. I had a supervision of the books and of the inside business.

Int. 6. When did Mr. Rogers retire from the firm of William M. Rogers & Co.?

Ans. He retired in 1865 finally.

Int. 7. What change, if any, occurred in his relations to the business of the firm in 1861, or thereabouts?

Ans. He retired from active participation in the business of the firm in the winter of 1861–'2.

224 Int. 8. Has your firm an apparatus or freezer for freezing fish, in use in Beekman street, in New York City? If yea, state where it is and when it was erected.

Ans. We have got a freezer, a preserving-apparatus, on the first floor of 134 Beekman street. It was built in the month of May, 1862.

Int. 9. Have fish been frozen in that freezer? If so, what kind?

(Objected to as to form and substance.)

Ans. There have been fish frozen in it. There have been striped bass and Spanish mackerel frozen in it. We put different sorts of fish in there at different times for preserving purposes, including salmon.

Int. 10. What was the expense of building that freezer?

(Objected to as to form and substance.)

Ans. From 224 to 225 dollars.

Int. 11. How do you fix the amount of the expense and the time of building the freezer?

(Objected to as to form and substance.)

Ans. By certain entries in the books of William M. Rogers & Co.

Int. 12. What preserving-apparatus had your firm in that place before May, 1862, if any?

(Objected to as to form and substance.)

Ans. We had an apparatus there. It was an ordinary ice-chest, with iron pans arranged directly under the lids.

Int. 13. When was that put up or arranged in the way you mention?

(Objected to as to form and substance.)

Ans. In the fall of 1861.

Int. 14. Who superintended the putting up of these apparatuses?

(Objected to as to form and substance.)

Ans. Mr. Enoch Piper superintended the putting up of the one in 1862. I think Mr. Piper superintended the putting up of the whole.

225 Int. 15. Do you know Enoch Piper, the complainant in this case? If yea, how long have you known him?

Ans. I do know him. I have known him from eight to ten years, more or less.

Int. 16. Have either or both of the firms that you have been connected with purchased from Mr. Piper artificially-frozen fresh salmon or other fish? If yea, when was the first purchase made, and the amount of the

purchases annually from Mr. Piper, and the average wholesale and retail prices of the frozen fish received from him for each year?

(Objected to as to form and substance.)

Ans. We did receive salmon and other fish from Mr. Enoch Piper. The facts that I now give are taken from the accounts rendered to Mr. Piper by the firms of William M. Rogers & Co. and Middleton, Carman & Co., except the three first seasons, from '58 to '61. In the season of 1858 and '59—that is, say from October of one year to the June of the following year—the firm of W. M. Rogers & Co. received from Mr. Piper about 400 lbs., or thereabouts, of salmon; the amount received in the season of '59 and '60 was 1,216 lbs.; the amount received in '60 and '61 was 1,308 lbs., more or less. The prices in '59 and '60, and in '60 and '61, were 60 cents per lb.; in '61 and '62 we received 2,879 lbs. of salmon, at 50 cents per lb.; in '62 and '63, 3,469 lbs., at 50 cents per lb.; in '63 and '64, 3,212 lbs.; about 2,100 lbs. of that at 75 cents and the balance at 65 cents; in the season of 1864 and 1865 we received 1,125 salmon; this season we purchased at so much per fish—one-half at $4 gold each, the other half at $8 currency each; in the season of 1865 and 1866, 1,655 fish—one-half at $4 gold per fish, the other half at $6 currency each; in the season of '66 and '67, 6,431 lbs., at 50 cents per lb.; in '67 and '68, 52,514 lbs, at an average of 25 cents per lb. The first time the firm of W. M. Rogers & Co. purchased frozen salmon from Mr. Piper was in December, 1858. The average retail prices in '58 and '59 were 85 cents to one dollar; in '59 and '60, and 60 and '61 the prices were 75 cents to 85 cents; from '61 to '63, 65 to 75 cents per lb.; from '63 to '66
226 the prices were from 75 cents to 1 dollar per lb.; for '66 and '67 prices were 65 to 75 cents per lb.; for 1867 and 1868, 40 to 60 cents per lb.

Int. 17. What was the average weight per salmon?

(Objected to as to form and substance.)

Ans. I should judge the average weight of the salmon was from ten and one-half to eleven pounds.

Int. 18. Have either of your firms, since you have been connected with them, received artificially-preserved frozen fresh salmon or other fish from any other parties besides Mr. Piper? If yea, state when they first received any, and from whom, and what kinds of fish.

(Objected to as to form and substance.)

Ans. My impression is that we did receive preserved salmon from Brown & Seavey, of Boston, only two or three years ago, more or less.

Int. 19. Do you know Joseph H. Racey, jr., fish-dealer in Central Market, New York City? If yea, how long have you known him?

Ans. I do know him; I have known him twelve years, or thereabouts.

Int. 20. State whether or not the firm of W. M. Rogers & Co. received from J. H. Racey, jr., or parties in business with him, any preserved fish, Spanish mackerel, or any other fish, either in a frozen or unfrozen state, while you were connected with that firm, prior to the year 1862.

(Objected to as to form and substance.)

Ans. I have no recollection of having received from Mr. Racey anything of the kind.

Int. 21. Did the firm of W'm M. Rogers & Co. have any Spanish mackerel during the time inquired of, from Mr. Racey or any parties in business with him?

(Objected to as to form and substance.)

Ans. I have no recollection of anything of the kind.

Int. 22. Did either of your firms, directly or indirectly, sell out of the

season of their catch any artificially-frozen fresh salmon or any other fish to J. H. Racey?

(Objected to as to form and substance.)

Ans. We have; salmon directly, [and I believe we have indirectly.]

227 (The portion of this answer marked in brackets is objected to.)

Int. 23. State when and in what way.

(Objected to as to form and substance.)

Ans. Yes; directly in the winter of 1867–'8, and indirectly through Messrs. Moore & Lamphier.

Adjourned to April 8, 1869, at 2 o'clock, p. m.

APRIL 8, 1869.

Counsel for both parties present.

Examination of GEORGE W. MIDDLETON, on the part of the complainant, resumed.

Int. 24. During the time you have been connected with your two firms have you known what kinds of fish they have dealt in?

(Objected to as to form and substance.)

Ans. I have.

Int. 25. During the time inquired of have you known what kinds of fish have been bought and sold in the markets of New York City?

(Objected to as to form and substance.)

Ans. I have, in a general way, as a matter connected with our business.

Int. 26. What has been the extent of the business of your two firms as compared with the business of other retail fish-dealers in New York City during the same period?

(Objected to as to form and substance.)

Ans. From the best sources of information our two firms have done the largest retail business.

Int. 27. How has the business of your two firms compared in extent with the business of the wholesale fish-dealers in New York City?

(Objected to as to form and substance.)

Ans. We are supposed to do a larger business than any of the wholesale dealers, with the exception of three or four.

Int. 28. What has been the average annual amount of the business done by your two firms? State as near as you can.

228 (Objected to as to form and substance.)

Ans. Say one hundred and fifty-five thousand dollars per annum since 1862.

Int. 29. Please state when you first learned of any preserved artificially-frozen salmon or other fish being bought and sold in the New York City markets, in or out of the season of their catch, except what were obtained from Mr. Piper, the complainant, directly or indirectly.

(Objected to as to form and substance.)

Ans. I do not know that I can locate the exact year, but I can approximate to it. I believe it to have been within the last four years.

Int. 30. Will you state a date prior to which none such were sold except what came from Mr. Piper, directly or indirectly?

(Objected to as to form and substance.)

Ans. No, I cannot.

Int. 31. When did you first know or learn of J. H. Racey having a freezing-apparatus, or freezer for freezing fish, etc.? State, as near as you can, the year.

(Objected to as to form and substance.)

Ans. I can't state the year precisely, but I believe it to have been since 1865.

Int. 32. When did you first know or learn of his having preserved frozen salmon or other fish that were not obtained from Mr. Piper, directly or indirectly?

(Objected to as to form and substance.)

Ans. I could not state when it was. I can't remember the time.

Int. 33. From what parties do the retail fish-dealers of New York principally obtain their fish?

(Objected to as to form and substance.)

Ans. From the wholesale dealers in Fulton Market.

Cross-examined:

Cross-int. 34. Will you state the season for catching Spanish mackerel?

Ans. During the summer and early fall; from June to October, taking the whole months, to the best of my knowledge and belief.

229 Cross-int. 35. About what was the average price paid for Spanish mackerel during the season of their catch in 1856?

Ans. I have no recollection of that season.

Cross-int. 36. Do you recollect the price in 1858?

Ans. I do not know that I can state the price positively. The price has been about the same during a number of seasons. From the first catching to the end of the season they range from one dollar and a quarter per pound to fifteen cents. I have known them as low as eight cents per pound.

Cross-int. 37. During the season of their catch does it not happen sometimes that the supply is scarce, days or weeks passing without any being brought in to any great amount?

Ans. It does happen that they are scarce. Some days very few would come in, but scarcely if ever running through weeks.

Cross-int. 38. About how late do they run into October?

Ans. It would depend very much upon the state of the weather.

Cross-int. 39. Does it not frequently happen that the catch ceases sometimes from the first to the middle of September, perhaps not entirely, but substantially?

Ans. Well, it may have done so. I have not refreshed my memory in regard to that matter.

Cross-int. 40. How would the price be affected by the scarceness of arrivals in the market of the fresh fish?

Ans. It would have a tendency to augment the price, if I understand the question. I would state in this connection that my particular part of our business, as a rule, has not brought me in contact with the wholesale markets. What I mean by that is that I have not been the purchasing agent of the firm.

GEORGE W. MIDDLETON.

Adjourned to April 10, 1869, at 9½ o'clock a. m.

230 *Deposition of Eugene G. Blackford, taken, subscribed, and sworn to before R. E. Stilwell, examiner.*

APRIL 8, 1869.

EUGENE G. BLACKFORD, being called as a witness on the part of the complainant, was duly sworn. He deposes and says as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. Eugene G. Blackford; age, twenty-nine; residence, 31 Hamil-

ton Place, Brooklyn, E. D.; occupation, fish-dealer, Fulton Market, New York City.

Int. 2. Have you been connected with the firm of Middleton, Carman & Co., fish-dealers, Fulton Market, New York City, and with the firm of W. M. Rogers & Co., their predecessors, fish-dealers in the same market? If yea, state in what capacity, and from what time to what time.

(Objected to as to form and substance.)

Ans. I have; as book-keeper, from May, 1864, to January, 1869.

Int. 3. Do you know what kinds of fish these firms dealt *with* while you were connected with them?

(Objected to as to form and substance.)

Ans. I do.

Int. 4. Have you known while connected with them the different kinds of fish bought and sold in the New York City markets?

(Objected to.)

Ans. I have. I do know.

Int. 5. State, if you know, the extent of the business of those two firms during the period you were connected with them as compared with the business of the other retail fish-dealers in New York City.

(Objected to.)

231 Ans. I believe them to have the largest retail business of any persons in their business.

Int. 6. What has been the extent of their business as compared with the business of the wholesale fish-dealers in New York City?

(Objected to.)

Ans. Judging from the revenue returns that I have read, their business is larger than any of the wholesale dealers with the exception of two firms.

(Answer objected to.)

Int. 7. What other means have you of knowing the comparative amount of their business with reference to the wholesalers and retailers besides what you have stated in your last answer?

(Objected to as to form and substance.)

Ans. Having a general knowledge and acquaintance with the business and principal dealers in fish, particularly in the retail trade.

Int. 8. Do you know Enoch Piper, the complainant in this case? If yea, how long have you known him?

Ans. Yes, I do; since 1864.

Int. 9. Do you know J. H. Racey, jr., fish-dealer in Centre Market, New York City? If yea, how long have you known him?

(Objected to.)

Ans. I know him since 1864.

Int. 10. Since your connection with those firms state whether or not they have received from Mr. Piper, the complainant, preserved artificially-frozen fish of any kind. If yea, state what and at what seasons of the year.

(Objected to.)

Ans. Yea. Salmon, shad, trout; principally in the fall, winter, and spring.

Int. 11. During the period inquired of did those firms receive preserved artificially-frozen fish from any other parties? If yea, state when they first received any, and from whom, and what kinds of fish.

(Objected to.)

Ans. Yea; some time in the year 1866 they received some preserved salmon, I think, from Brown & Seavey, of Boston.

232 Int. 12. Had those firms while you were with them a preserv-

ing-apparatus, or freezer, for freezing fish? If yea, state where it was located, and whether you have seen it.

(Objected to.)

Ans. Yea; it was located in their store in Beekman street. I don't know the number; opposite the market. I never had occasion to use that number enough to impress it on my mind.

Int. 13. While you were book-keeper for those firms did they sell any preserved artificially-frozen fish to J. H. Racey? If yea, state during what part of the time inquired of those sales were made.

(Objected to.)

Ans. Yea. To the best of my knowledge and belief more or less every year since 1864.

Int. 14. Did either of those firms during the same period purchase or receive any preserved artificially-frozen Spanish mackerel or other fish from J. H. Racey or parties in business with him in Centre Market?

(Objected to as to form and substance.)

Ans. Not to my knowledge.

Int. 15. From what parties do the retail fish-dealers in New York City obtain their fish principally?

(Objected to.)

Ans. From the dealers located in the wholesale market, I should judge, in Fulton Market.

Int. 16. When did you first learn of there being in the New York City markets any preserved artificially-frozen salmon or other fish, except what were obtained from Mr. Piper directly or indirectly? State as near as you can.

(Objected to.)

Ans. About the fall of 1866.

Int. 17. When did you first know of J. H. Racey's having an apparatus or preserver for freezing fish?

(Objected to.)

Ans. In the summer of 1866.

233 Cross-examined without waiving any of the objections taken to specific questions, and all interrogatories objected to de bene esse:

Cross-int. 18. Were all the purchases of fish made by the two firms, Rogers & Co., and Middleton, Carman & Co., entered in detal upon their books?

Ans. No.

Cross-int. 19. Were they all reported to you in detail?

Ans. No.

Cross-int. 20. You do not wish to be understood as saying that no purchases were made by any one of the members of those two firms which were not known to you?

Ans. No.

Cross-int. 21. Were all the sales made for cash or otherwise entered in detail upon the books of those firms?

Ans. Cash sales not entered in detail. Other sales were.

Cross-int. 22. Did you sell?

Ans. I did.

Cross-int. 23. Did you individually ever sell to Mr. Racey?

Ans. No.

Cross-int. 24. During the period you were connected with those firms was there any running account with him on the books?

Ans. During one year there was.

Cross-int. 25. What year?

Ans. Could not state without examining the books.

Cross-int. 26. Do you know, of your own knowledge, that sales of artificially frozen salmon were made to Mr. Racey?

Ans. I do.

Cross-int. 27. How do you know it?

Ans. Collected the bills of him in person.

Cross-int. 28. In what year?

Ans. My impression is that it was about 1867.

Cross-int. 29. How do you know these bills were for preserved artificially frozen salmon?

Ans. Because they were parts of lots shipped to Middleton, Carman & Co. by Enoch Piper.

234 Cross-int. 30. If you did not make the sale, nor see the fish delivered, how do you know that?

Ans. Because I had knowledge that the sales being effected by the case as received from Mr. Piper.

Cross-int. 31. What do you mean by saying that "I had knowledge," etc.?

Ans. As we received invoices of preserved artificially frozen salmon from Enoch Piper, I was directed to charge one case of the fish to J. H. Racey, jr., and I collected the bill for the same.

Cross-int. 32. Did the bill contain a description of the goods? Do you remember if it did?

Ans. It did.

Cross-int. 33. How many salmon were there?

Ans. I could not tell you without examining the accounts.

Cross-int. 34. What was their weight?

Ans. The same answer.

Cross-int. 35. What month was it?

Ans. The same answer.

Cross-int. 36. Did you see the contents of any case?

Ans. No; not of the case sold Racey.

Cross-int. 37. How do you know they were not some other fish than salmon?

Ans. Because I don't suppose that Mr. Racey would pay the bill unless they were salmon.

Cross-int. 38. How do you know but what that case contained partridges as well as salmon, or all partridges?

Ans. Well, I don't know of any better answer than I gave there before.

Cross-int. 39. You know that Piper did send up frozen partridges, did you not?

Ans. Yes.

Cross-int. 40. This was in the winter season, was it not?

Ans. I could not state definitely without examining the books.

Cross-int. 41. How do you know that the contents of that case were artificially frozen?

Ans. Because they were so described by Mr. Piper in shipping them to Middleton, Carman & Co., and by them so sold.

235 Cross-int. 42. Do you mean to say that they were so described in your bill, as artificially frozen?

(Objected to.)

Ans. No.

Cross-int. 43. Now, is it not true that the cases received from Piper were so exactly alike that you could not always tell whether they con-

tained salmon or partridges; and have you not delivered cases containing partridges, supposing you were delivering salmon?

Ans. No.

Cross-int. 45. Have you not sold Piper salmon to Brown & Seavey?

Ans. Yes.

Cross-int. 46. Did they not return a case containing partridges, or proceeds of sales of partridges, which were sent them by mistake as salmon?

Ans. They returned account sales of a few partridges which were stowed in several cases of salmon. To my knowledge, no case of partridges was ever returned.

Cross-int. 47. How many are several?

Ans. Two or three.

Cross-int. 48. Did you send any invoice of these partridges to Brown & Seavey at the time you sent the bills or invoicing of the salmon?

Ans. I did.

Cross-int. 49. Did you charge them on the books?

Ans. Yes.

Cross-int. 50. How did you know how many there were?

Ans. From the account rendered by Brown & Seavey; also a memorandum from E. Piper of the number of partridges shipped.

Cross-int. 51. Were the cases numbered?

Ans. No.

Cross-int. 52. How, then, did you know how many partridges those cases contained before you received your account sales from Brown & Seavey?

Ans. I did not know.

236 Cross-int. 53. Were you in the habit of trusting to those to whom you sent goods for the only account you could have of them?

Ans. Often.

Cross-int. 54. Did you do so in the case of Mr. Racey?

Ans. My impression is we did in one instance.

Cross-int. 55. How did you know that Mr. Racey had a freezer in 1866?

Ans. From hearsay; and I think Middleton, Carman & Co. bought frozen quail of J. H. Racey that year.

Cross-int. 56. Artificially frozen?

Ans. Yes.

Cross-int. 57. Did not Middleton, Carman & Co. also have a freezer at that same time?

Ans. Yes.

Cross-int. 58. Why did they not freeze their own quail?

Ans. Because they were not smart, and not engaged in the game business at that time. They were engaged in the fish business. The remark about their not being smart was jocosely made.

Cross-int. 59. Was not Mr. Racey also engaged in the fish business?

Ans. Fish and game.

Cross-int. 60. Do you mean to state it as a fact, within your own knowledge, that Mr. Racey was engaged in the game business, as an independent branch of business, in 1866, any more than Middleton, Carman & Co. were?

Ans. I can't answer positively as regards the year, but know that Mr. Racey called his business fish and game, and Middleton, Carman & Co. made no such claim.

Cross-int. 61. How many years is it since Middleton, Carman & Co. have been selling game?

Ans. Could not say without referring to the books.

Cross-int. 62. Have they not sold more or less of it since you had any connection with them in 1864?

Ans. Do not recollect of any game transactions during '64 and '65.

237 Cross-int. 63. Don't you think you could find some entries on the books of sales of game in 1864 and 1865?

(Objected to.)

Ans. Can't recollect any.

Cross-int. 64. Do you mean to say as a matter of fact there were none?

Ans. I can't answer without examining the books.

Cross-int. 65. When you go to the wholesale market in the morning, do you generally tell to all the other retail dealers, or the most of them, all the business you have done the day before?

Ans. No.

Cross-int. 66. Did you ever know any retailer that did?

Ans. No.

EUGENE G. BLACKFORD.

Deposition of Louis H. Vultee, taken, subscribed, and sworn to before R. E. Stilwell, examiner.

FRIDAY, *April 9th*, 1869.

Present, counsel for the respective parties.

LOUIS H. VULTEE, called and sworn as a witness on the part of the complainant, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Louis H. Vultee; forty-one years of age; reside in Jersey City, and am collector for the Jersey City Daily Times newspaper.

Int. 2. What was your business in January, 1863?

Ans. I was connected with the first district court in New York City in foreclosing mortgages, serving summons, serving subpœnas, etc.

238 Int. 3. About that time were you acquainted with George Moore, of the firm of Moore & Lamphier, fish-dealers in Fulton Market, New York City?

(Objected to.)

Ans. Yes, sir.

Int. 4. About that time did you know or have anything to do with fish-stands No. 15 and 17 in Centre Market, New York City?

(Objected to.)

Ans. I did, sir.

Int. 5. Did you know W'm H. Racey, fish-dealer in that market?

(Objected to.)

Ans. Yes, sir.

Int. 6. Did you know Joseph H. Racey, jr., fish-dealer in Centre Market?

Ans. I don't think I did.

Int. 7. In January, 1863, or thereabouts, were you employed by Mr. George Moore to do anything with reference to the property at those fish-stands in Centre Market or used in connection therewith?

(Objected to.)

Ans. Yes, sir.

Int. 8. Did you do anything in regard to that property? If yea, state what.

(Objected to.)

Ans. I foreclosed a mortgage against the property, W'm H. Racey, on stands 15 and 17 Centre Market.

Int. 9. Who was the mortgagee in the mortgage you speak of?

(Objected to.)

Ans. Mr. Moore.

Int. 10. Now state what he employed you to do.

(Objected to.)

Ans. He employed me to foreclose the mortgage.

Int. 11. Whose and what property did you foreclose on?

(Objected to.)

Ans. Property of W'm H. Racey, Centre Market.

239 Int. 12. State what was done by you with reference to that property.

(Objected to.)

Ans. I demanded money to the amount of the mortgage of W'm H. Racey, which was not paid. I then advertised the property for sale and sold it at public auction.

Int. 13. Were you present at the time of the sale?

(Objected to.)

Ans. Yes, sir.

Int. 14. Where was the property situated at the time of sale?

(Objected to.)

Ans. At stands No. 15 and 17 Centre Market, in the market.

Int. 15. Was there a horse and wagon sold at that time?

(Objected to.)

Ans. Yes; horse, wagon, and harness.

Int. 16. Where was that placed at the time of the sale?

(Objected to.)

Ans. It was standing in the street.

Int. 17. What street? How near the stand?

(Objected to.)

Ans. Centre street, right back of the stand.

Int. 18. Who purchased that property?

(Objected to.)

Ans. Mr. Wingate. I don't remember his first name.

Int. 19. What was his business then?

(Objected to.)

Ans. Lawyer.

Int. 20. Did you make a schedule of the different articles sold?

(Objected to.)

Ans. Yes, sir.

Int. 21. Was there any other property of W'm H. Racey at those stands, or connected with him, besides what you then sold?

(Objected to.)

Ans. There was not. I sold all the property.

Int. 22. Were there any ice-boxes sold; and if so, how many?

(Objected to.)

240 Ans. One ice-box, only.

Int. 23. Where was that ice-box situated at the time of sale?

(Objected to.)

Ans. At the stands.

Int. 24. Describe it.

(Objected to.)

Ans. It was an ice-box, such as is usually kept by fishmongers to put their fish in; about five foot long, about three foot high, and about three foot wide, and opened at the top.

Int. 25. Did you see the inside of that box?

(Objected to.)

Ans. I think I did.

Int. 26. What did you see there?

(Objected to.)

Ans. I could not tell the contents. I know it was lined with zinc, like all those boxes are.

Int. 27. Did you see any pipes, or tubes, or shelves in it?

(Objected to.)

Ans. No, sir.

Int. 28. At the time of the sale were there any other receptacles for ice at those stands, or connected with them?

(Objected to.)

Ans. None but that ice-box.

Int. 29. Besides the property you thus sold was there any other personal property at those stands, either separate from, or mingled with, the property sold?

(Objected to.)

Ans. No.

Int. 30. Will you state the precise day of sale, referring to any memorandum you may have to refresh your memory?

(Objected to.)

Ans. On the twentieth day of January, 1863.

Int 31. Have you referred to any memoranda; and, if yea, who made it, when it was made?

(Objected to.)

241 Ans. I have referred to a memoranda made by myself of the articles sold by virtue of that mortgage on the day of sale, January 20, 1863.

Int. 32. Will you please state now the names of the articles sold and the prices they brought?

(Objected to.)

Ans. Two fish-stands with marble slabs, $10; one ice-box, 50 cents; a lot of fish-tools, knives, etc., 50 cents; one stone dish, stool, partition, looking-glass, stool, gas-fixtures, etc., $10; one horse, cart, and harness, $106.

Int. 33. Who acted auctioneer in making the sale?

(Objected to.)

Ans. S. & J. Bogert, auctioneers.

Int. 34. How many mortgages did you act under in those sales?

(Objected to.)

Ans. Two.

Int. 35. Have you these mortgages now in your hands? If yea, please produce them.

(Objected to.)

Ans. I have, and I produce them, (and they are marked "Vultee Exhibit" and Vultee's return, on them.)

(Objected to, the admissibility of the exhibit and the return.)

Int. 36. Whose return is annexed to the mortgages, who made it, and when was it made?

(Objected to.)

Ans. My own, made by me, January 21, 1863.

Int. 37. Will you please examine those mortgages, and state the names of the mortgagors and mortgagees?

(Objected to.)

Ans. One is dated 13th March, 1861, W'm H. Racey, mortgagor, and Geo. Moore, mortgagee. The other one, dated 13th March, 1861, W'm H. Racey, mortgagor, and George Moore, mortgagee.

Int. 38. Will you also state the schedule of the property inserted in or made a part of each of the mortgages, beginning with the one you have first named?

(Objected to, and also upon the specific ground that the con-
242 tents of written papers offered in evidence *is* sought to be put in by the answer irrespective of the admissibility of the written papers themselves.)

Ans. Two marble-top fish-stands, with the drawers and lockers appertaining thereto; two scales, one safe, two ice-boxes, fish-tools, office-furniture, and all other fixtures connected with and now in the fish-stands No. 15 and 17 in Centre Market, aforesaid. The other mortgage calls for one bay horse and cart, one set of harness.

Cross-examined, de bene esse, by Mr. Avery:

Cross-int. 39. On the day you made the sale you refer to, did you see W'm H. Racey?

Ans. I think he was. [I think all the parties were there. Mr. Moore and Mr. Racey, and Mr. Moore's attorney, and Mr. Racey's attorney, and Mr. Riddle, another lawyer.]

(The part in brackets objected to.)

Cross-int. 40. How long before the sale did you present the claim, under the pretended mortgages you have referred to, to W'm H. Racey, for payment?

(Objected to.)

Ans. I think it was the day before the sale.

Cross-int. 41. How do you fix the time?

Ans. By the charge for keeping the horse.

Cross-int. 42. Where did you find Mr. Racey when you made the demand?

Ans. In the market.

Cross-int. 43. Are you positive that you made a demand on W'm H. Racey?

Ans. I will not swear positively, but to the best of my recollection I did, as I never foreclosed a mortgage without making a demand upon the party.

Cross-int. 44. Did you sell, or offer for sale, any articles which were not named in the pretended mortgages under which you acted?

(Objected to.)

Ans. No, sir.

243 Cross-int. 45. When were you first called upon to attend as a witness in this case, and by whom?

Ans. By a gentleman named Mr. Irish; two, three, or four days ago.

Cross int. 46. Independent of your returns and memoranda, have you a distinct remembrance of the transaction in its details?

Ans. I have a distinct recollection of the transaction of selling out a fish-stand in Centre Market, but could not tell the details without refreshing my memory from the mortgage I acted on.

Cross-int. 47. When last did you see that mortgage or any memoranda made by you in regard to it before the same were handed you by counsel for the complainants here to-day?

Ans. Last evening at my residence.
Cross-int. 48. Who brought it to you?
Ans. Mr. Cutter.
Cross-int. 49. When did you first see it after you made your return?
Ans. Last night was the first I saw of it since I made my return.

LOUIS H. VULTEE.

Deposition of W'm H. Middleton.

Subscribed and sworn to before me.

R. E. STILWELL,
Examiner.

APRIL 9, 1869.

Present, counsel as before.

WILLIAM H. MIDDLETON, called and sworn as a witness on the part of the complainant, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Wm. H. Middleton; forty-one years of age; reside in Brooklyn, New York, and am a fish-dealer.

244 Int. 2. How long have you been in that business, and where?

Ans. About twenty-five years, at Fulton Market, New York City.

Int. 3. With what firm are you now connected as a member, and with what other firms have you been connected in business?

Ans. Middleton, Carman & Co. now, formerly W. M. Rogers & Co., and before that of the firm of Charles Butler & Co.

Int. 4. From what time to what time have you been a member of the two first-named firms?

Ans. I was a member of the firm of W. M. Rogers & Co., I think, from 1858 to December, 1866, and from that time to the present have been a member of our present firm.

Int. 5. What has been the nature of the business of those two firms while you have been with them?

Ans. Dealers in all kinds of fish.

Int. 6. What has been the nature of your duties or business in connection with these firms?

Ans. General superintendent of the business.

Int. 7. Have you had any knowledge or acquaintance with the other dealers in fish in New York City; with the kinds of fish, and the fish business generally in New York City? And if yea, state to what extent.

(Objected to.)

Ans. I have, to a great extent.

Int. 8. Do you know Enoch Piper, the plaintiff in this case, and how long have you known him?

Ans. Yes, sir; I have known him since 1858.

Int. 9. What is, and has been, the extent of the buiness of the firms of Middleton, Carman & Co., and the firm of W. M. Rogers & Co., since you have been connected with them, as compared with the business of the other retail fish-dealers in New York City?

(Objected to.)

Ans. I think ours compare favorably, as to the amount of business, with any of them.

Int 10. What do you mean by "favorably" in this connection?

245 (Objected to.)

Ans. I mean that our business is as extensive as a number of them, and a great deal more so than a great many of them.

Int. 11. How has the business of your two firms compared in extent with the business of wholesale dealers in fish in New York city?

Ans. According to the returns, I believe there are only two or three firms who have made larger returns than we have.

Int. 12. What returns do you refer to?

(Objected to.)

Ans. Returns to the United States assessor for taxes.

Int. 13. What other means of knowledge have you of the comparative amount of business done by your firms and the other dealers while you have been connected with them?

(Objected to.)

Ans. None but my own observation and the amount of fish which generally come to market from day to day.

Int. 14. Where are the places of business of the wholesale dealers located in New York City?

(Objected to.)

Ans. Fulton Market.

Int. 15. How near to your place of business?

(Objected to.)

Ans. Across our street.

Int. 16. By whom are retail dealers principally supplied with fish in New York City? From what market or markets?

(Objected to.)

Ans. Wholesale dealers in Fulton Market.

Int. 17. Have either of your firms received fish from Enoch Piper? If yea, when first did they receive any, what kinds of fish, and how long they dealt with him?

(Objected to.)

Ans. They have, and I think first in 1858. We received frozen salmon. We have dealt with him from that time to the present, continually, every year.

Int. 18. Have either of your firms received from Enoch Piper
246 any preserved artificially-frozen salmon or other fish? If yea, when first received and to what extent since?

(Objected to.)

Ans. We have, from about 1858, on an average of about thirty thousand pounds per year.

Int. 19. Have either of the two firms with which you have been last connected received any preserved artificially-frozen salmon or other fish from any other parties? If yea, state from whom, and when first they received them.

(Objected to.)

Ans. We have received them from Brown & Seavey, and we have bought them in the wholesale market. There are none others. I received them from Brown & Seavey first in 1867, along in the fall and winter of that year.

Int. 20. State what kind of frozen fish you received.

(Objected to.)

Ans. Salmon.

Int. 21. When first did you know or learn of preserved artificially-frozen salmon or other fish being in the New York City markets, except what came from Mr. Piper directly or indirectly?

(Objected to.)

Ans. I don't know as I can answer that question. I don't think I heard of any prior to 1866.

Int. 22. Were there any in those markets prior to 1864, except such as came from Mr. Piper, directly or indirectly?

(Objected to.)

Ans. I think not.

Int. 23. How confident are you in regard to that fact?

(Objected to.)

Ans. Well, I am confident enough to know—to state it to be a fact.

Int. 24. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market, New York City; and, if yea, how long have you known him?

Ans. I do; and have known him about twenty years.

Int. 25. Has he furnished any preserved artificially-frozen sal-
247 mon, or other fish, or game, in the New York markets at any time, except what came from Mr. Piper, directly or indirectly; and, if yea, when first did he do so?

(Objected to.)

Ans. He has. I should think it was about 1866.

Int. 26. Have either of your firms, while you have been connected with them, had in use a preserving-apparatus, or freezer for freezing fish? If yea, where is it situated, and how long have they had it?

(Objected to.)

Ans. We have. It is situated at 34 Beekman street, New York, and we have had it since the spring of 1862.

Int. 27. What had they for keeping frozen fish in prior to that?

(Objected to.)

Ans. We had a large ice-box, with pans at the top, in which salt and ice were put.

Int. 28. How long did they use that?

(Objected to.)

Ans. We used that from the latter part of 1861 until we got the freezer.

Int. 29. Did either of those firms sell artificially-frozen fish out of the season of their catch to J. H. Racey?

(Objected to.)

Ans. We did.

Int. 30. State when they first sold to him, directly or indirectly; what kinds of frozen fish, and during what time those sales have been made.

(Objected to.)

Ans. We have been selling to him, more or less, ever since we have first had them from Mr. Piper, either directly or indirectly—salmon.

Int. 31. Has Mr. Racey, to your knowledge, seen the two apparatus you have named, as used by your firm, to your knowledge? If yea, state when and under what circumstances.

(Objected to.)

248 Ans. He has. The first time must have been some time in the winter of 1861 and 1862, while we were using that box. He came there, and went in our store-house to look at the box.

Int. 32. Did you go with him?

(Objected to)

Ans. I was in the store-house at the time that he was examining the box.

Int. 33. Are there any other circumstances?

(Objected to.)

Ans. Nothing particular.

Int. 34. Did he see the interior of the box? If yea, state how you know that he did.

(Objected to.)

Ans. We had the box open, and were examining the arrangement.

Int. 35. Was the box in operation at the time?

(Objected to.)

Ans. It was.

Int. 36. Did he have any frozen fish from it at that time?

(Objected to.)

Ans. I think he did.

Int. 38. When did he see the second freezing-apparatus—the one put up in 1862?

(Objected to.)

Ans. I can't state positively, but a short time after it was put up.

Int. 39. State the circumstances under which Mr. Racey saw it.

(Objected to.)

Ans. He was there a number of times, getting more or less salmon and other fish of us. He was in and out of our store-house, where the freezer was.

Int. 40. Did he see the interior of that apparatus when you were there? If yea, state how you know that he did.

(Objected to.)

249 Ans. We were taking out salmon and other fish. There was nothing to hinder him from seeing the interior.

Int. 41. Was the freezer in operation at the time?

(Objected to.)

Ans. It was.

Int. 42. Was it opened in his presence?

(Objected to.)

Ans. It was.

Int. 43. Did he receive frozen fish from it?

(Objected to.)

Ans. He did.

Int. 44. What did he receive from that freezer, if anything?

(Objected to.)

Ans. Frozen salmon.

Int. 45. Do you know of Mr. Racey's having a preserving-apparatus for freezing fish or game? If yea, when did you first know of it? State as near as you can.

(Objected to.)

Ans. I do. It was not prior to 1864.

Int. 46. Did the firm of W'm M. Rogers & Co., at any time while you were connected with them, prior to 1864, have from Mr. Racey, directly or indirectly, any preserved artificially frozen Spanish mackerel or other fish, in a frozen or unfrozen state when received?

(Objected to.)

Ans. No.

Int. 47. Will you state a date or time prior to which there was not in the New York markets, out of the season of their catch, any preserved artificially frozen salmon or other fish, except what came from Mr. Piper dirrctly or indirectly?

(Objected to.)

Ans. There was none prior to 1864.

Int. 48. Will you state whether you wish to make any change or correction in any of your answers? If yea, state what it is.

(Objected to.

Ans. Yes; in one question this morning, in reference to the
250 time of receiving frozen salmon from Brown & Seavey. I have got it one year too late. It should have been in the fall of 1866 instead of 1867.

Int. 49. When did either of your firms first meet with any competition, if any, in the New York markets, with reference to the sale of preserved artificially frozen salmon or other fish? State as near as you can, and from what parties.

(Objected to.)

Ans. In 1866; from Brown & Seavey.

Cross-examination de bene esse:

Cross-int. 50. From what did you obtain the dates that you have given in answer to the several questions which have been propounded in chief?

Ans. Principally from our books.

Cross-int. 51. Have you any independent memory of those several dates?

Ans. No.

Cross-int. 52. Have you your books here?

Ans. No.

Cross-int. 53. Have you any correct transcript of the entries from which you obtained these dates?

Ans. No.

Cross int. 54. To what paper did you refer when you answered the 30th interrogatory?

Ans. It was a little memorandum I had; that's all.

Cross-int. 55. A memorandum of what?

Ans. A memorandum of the dates of the time I went into partnership with W. M. Rogers & Co., and when that firm was changed to Middleton, Carman & Co., and also a memorandum of the average amount of fish we had yearly from Mr. Piper. That is about all.

Cross-int. 56. Have you any charges on your books showing any sales of salmon received from Piper made to Mr. Racey?

Ans. We have.

Cross-int. 57. Will you produce the books containing them?

Ans. We can, and we will.

251 Cross-int. 58. When shall that be done?

Ans. Any time next week. It cannot be done to-morrow.

Cross-int. 59. Why can't that be done to-morrow?

Ans. Because we can't find the books. They are old books, and it would take a whole day to go through them.

Cross-int. 60. Do you know the years in which the entries of these sales were made?

Ans. Yes. From about '61 to the present time, I suppose.

Cross-int. 61. Do you know?

Ans. Yes.

Cross-int. 62. How do you know that there are entries on your books showing such sales in each one of these years to Racey?

Ans. I know he had fish, and they must be charged somewhere.

Cross-int. 63. Did you trust him during every one of those years?

Ans. I don't know that we did; not each year.

Cross-int. 64. Do you enter on your books the names of persons to whom you make cash sales?

Ans. Not always.

Cross-int. 65. Do you as a general thing?

Ans. No.

Cross-int. 66. If you gave no credit to Mr. Racey during any one of those years, and no charges were made against him on your books, how can you say that, in fact, sales were made to him during all those years?

Ans. They are charged to another firm. A great many of them were marked "Racey."

Cross-int. 67. Is that the only way you know?

Ans. Yes.

Cross-int. 68. During the year 1861, did you personally sell any fish to Mr. Racey?

Ans. I can't say that I did personally.

Cross-int. 69. Did you during the year 1862?

Ans. I can't say.

Cross-int. 70. '63?

Ans. I can't say.

252 Cross-int. 71. '64?

Ans. I can't say.

Cross-int. 72. '65 or '66?

Ans. I can't say.

Cross-int. 73. '67 or '68?

Ans. Yes; I did to his men.

Cross-int. 74. My question is to Mr. Racey.

Ans. To his men, by his order.

Cross-int. 75. Written order?

Ans. Yes.

Cross-int. 76. Have you it?

Ans. No.

Cross int. 77. Where is it?

Ans. I suppose it is destroyed.

Cross-int. 78. When did you individually deliver any?

Ans. I can't give the date.

Cross-int. 79. How do you fix the year?

Ans. I can remember back as long as that.

Cross-int. 80. Can't you remember back to 1866?

Ans. Not well enough to fix a date of delivering a fish.

Cross-int. 81. Do you remember ever to have delivered any fish to Mr. Racey prior to 1868 so as to fix the year?

Ans. No, I do not.

Cross-int. 82. Do you remember any specific time, as a matter of memory solely, fixing the month or season when you and Mr. Racey were ever together in your store-house in Beekman street, prior to 1868?

Ans. I can't remember the month; but I know that Mr. Racey was in there examining that box, and that must have been between the fall of 1861 and the spring of 1862. It could not have been any other time, because we did not have the box there.

Cross-int. 83. How do you know that Racey ever examined that box, and what do you mean by "examine?"

Ans. I know because I was there at the time, and I mean by "examine" that he was looking at the arrangement.

Cross-int. 84. Who else was there at the same time?

253 Ans. Mr. Rogers.

Cross-int. 85. Who else?

Ans. There was no one else at that time.

Cross-int. 86. You say the box was in operation?

Ans. Yes.

Cross int. 87. How came Mr. Racey in there? Did you ask him in?

Ans. I don't recollect whether we gave him a particular invitation to

go in or not. We were in and out of our store all the time, getting things out, and he went in with us.

Cross-int. 88. What was there that particularly occurred at that time which now, after seven or eight years, enables you to select Mr. Racey as the man who examined that box?

Ans. Well, I can tell you. Mr. Racey had been for a long while held in bad repute; whether justly so or not I don't say. Along about that time, he had seemed to take a new start, and he was at our office almost every day, and over in our store, and had considerable goods of us of different kinds for which he paid. From these circumstances, I remember the fact of his being there.

Cross-int. 89. And yet you are unable to fix it in either one of the two years, '61 or '62?

Ans. It was in both. It was in the fall of '61 and the spring of '62, along about that time.

Cross-int. 90. Do you mean to say that you now distinctly remember that you, Mr. Rogers, and Mr. Racey were in that store-room examining that box more than once?

Ans. No.

Cross-int. 91. When you were there that once, what was said by any one of you?

Ans. I don't remember the exact conversation that took place.

Cross-int. 92. What did any one of you do?

Ans. I think we got something out of the box at the time for Mr. Racey.

Cross-int. 93. Do you, in fact, remember that you did?

Ans. I am not positive about that.

Cross-int. 94. Did you take the pans out?

254 Ans. We did if we got anything out for Mr. Racey. I don't remember positively.

Cross-int. 95. Don't remember what positively?

Ans. Whether we took the pans out for Mr. Racey.

Cross-int. 96. And you don't remember anything that was said by any one of you?

Ans. I don't remember the conversation.

Cross-int. 97. Do you remember what you had in the box at that time?

Ans. We had salmon for one thing, and I think we had some other fish in there.

Cross-int. 98. Was there ice in it?

Ans. There was some ice in it.

Cross-int. 99. Was it full or nearly full?

Ans. I can't remember distinctly about that.

Cross-int. 100. About how high was that box?

Ans. About four and a half feet.

Cross-int. 101. Do you ever remember being in the store-house at any time after May, 1862, with Mr. Racey?

Ans. Not any particular time.

Cross-int. 102. Did you keep the books of William M. Rogers & Co. at one time?

Ans. I did; but I was not confined entirely to the books.

Cross-int. 103. Did you keep them in 1856 and 1857?

Ans. I did.

Cross-int. 104. Exclusively?

Ans. Yes.

Cross-int. 105. Can you tell how early in 1856 you had Spanish mackerel for sale, as a matter of memory?

Ans. I cannot.

Cross-int. 106. Can you tell how late you had them that year?

Ans. I cannot.

Cross-int. 107. Can you tell how early or how late you had them in 1857?

Ans. I cannot.

Cross-int. 108. Would you say, as a matter of memory, that you
255 did not sell during one or both of those years Spanish mackerel in small quantities as late as November or December?

Ans. No; I cannot state from memory.

Cross-int. 109. Do you remember all the persons of whom you purchased Spanish mackerel in those two years?

Ans. I do not.

Cross-int. 110. Do you remember all of whom you purchased in 1858 and 1859?

Ans. No.

Cross-int. 111. From 1856 to 1861, inclusive, will you say, as a matter of memory, that you did not have Spanish mackerel for sale as late as November and December?

Ans. No.

Cross-int. 112. Can you always tell, in the winter-season, by looking at fish, whether they have or not been frozen; and, if so, whether they were frozen artificially or not?

Ans. I could tell whether they had been frozen, but could not tell whether they had been frozen by artificial means.

Cross-int. 113. Now, will you say, as a matter of memory, that during no one of the years from 1856 to 1861, inclusive, the firm of W. M. Rogers & Co. did not sell Spanish mackerel which had been frozen?

Ans. No.

Cross-int. 114. You say that you can tell by looking at fish whether they have been frozen or not. If the frost has been taken out of them by artificial means, not by natural thawing, can you tell if they have been frozen?

Ans. If I examine them properly, I can.

Cross-int. 115. How can you tell?

Ans. By their general appearance.

Cross-int. 116. Will you describe the general appearance which enables you to tell whether or not they have been frozen, as inquired of in the preceding question?

Ans. No fish after it has been frozen and thawed retains its color or the smooth appearance of the skin.

256 Cross-int. 117. The length of time which it has been frozen does not in any way change this result, does it?

Ans. It does not if the fish has been kept frozen hard all the time. If the fish have been thawed and frozen again, and then thawed, it makes a great difference in the result.

Cross-int. 118. When first did any one of your firms sell any game of any kind?

Ans. That is a thing that we deal so little in that I cannot speak from memory.

Cross-int. 119. Did you sell any prior to 1864?

Ans. I don't remember.

Cross-int. 120. Did you in 1864, 1865, or 1866?

Ans. If we had any orders for any, we did.

Cross-int. 121. Did not Piper send you some?

Ans. I don't remember whether he did or not.

Cross-int. 122. Do you state as a fact known to you that no fish, artificially frozen, have ever been sold by any person in the city of New York, except such as has been frozen by Mr. Piper, whether in large or small quantities, one fish or five hundred, prior to the year 1864?

Ans. No.

Cross-int. 123. Of how many different persons has your firm purchased artificially-frozen fish, to your individual knowledge, since 1864?

Ans. Well, probably three or four.

Cross-int. 124. Have you ever heard of any parties other than Piper and Brown & Seavey offering for sale artificially-frozen salmon in the markets of New York since 1864?

Ans. Yes.

Cross-int. 125. Who were they?

Ans. S. B. Miller & Co. had some.

Cross-int. 126. About how much has been the average yearly income derived by your house from the sale of artificially-frozen salmon under your agreements with Mr. Piper?

(Objected to.)

Ans. I can't state from memory.

257 Cross-int. 127. Can't you tell about how much, whether 1,000 or 10,000 dollars?

Ans. No.

Cross-int. 128. Would you say, as an estimate, that it was 5,000?

Ans. No.

Cross-int. 129. More or less?

Ans. More.

Cross-int. 130. More than 5,000 and less than 10,000?

Ans. I should not think it was less than 10,000 dollars.

Cross-int. 131. Do you know who froze the salmon offered for sale by Miller & Co.?

Ans. Not of my own knowledge.

Cross-int. 132. Had not Rogers & Stone offered for sale in the market artificially-frozen salmon?

Ans. Not to my knowledge.

Cross int. 133. Have you ever heard that they froze any?

(Objected to.)

Ans. I never heard that they froze any. I heard that they had some frozen salmon.

Cross-int. 134. Has your firm made any arrangement with Mr. Piper for building, or obtaining license to build, any other freezer than that which you now have?

(Objected to.)

Ans. We have.

Cross-int. 135. How large a one?

Ans. There is no particular dimensions.

Cross-int. 136. Have you more than one in use now?

Ans. No.

Cross-int. 137. Have you any interest in more than one?

(Objected to.)

Ans. No direct interest.

Cross-int. 138. Have you an indirect interest?

(Objected to.)

Ans. Yes.

Cross-int. 139. How many, and where located?

258 Ans. One; it is located in Dey street.

Cross-int. 140. About how large is it? How many compartments are there in it?

Ans. I don't know. I never saw it.

Cross-int. 141. About how extensive a one do you contemplate building or erecting, as inquired of in interrogatory 134?

(Objected to.)

Ans. We don't contemplate building any large one. We don't contemplate building any.

Cross-int. 142. Please then explain your answer to the 134th interrogatory. What do you mean by it?

Ans. I mean that we have a freezer already built.

Re-examined:

Int. 143. Through what parties did you sell frozen salmon to J. H. Racey, which were charged to other parties, but marked Racey?

(Objected to generally, and also on the ground that it is calling for the contents of his books without producing the books themselves in evidence.)

Ans. Moore & Co.

Int. 144. Refer to question and answer No. 66 in your cross-examination, and state what firm you referred to.

(Same objection as to preceding question.)

Ans. Moore & Co.

WM. H. MIDDLETON.

Adjourned to April 10, 1869, at 9½ a. m.

259 *Deposition of Mathew J. Tuomey, taken, subscribed, and sworn to before R. E. Stilwell, examiner; counsel for both parties present.*

APRIL 1, 1869.

Examination of MATHEW J. TUOMEY, who, being duly sworn on behalf of the complainant, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation, and where is your present place of business?

Ans. My name is Mathew J. Tuomey; my age, forty-two; my residence is in Ninety-seventh street, west of Third avenue, New York City; I am a butcher; do business in Centre Market, at stalls Nos. 47 and 48.

Int. 2. How long have you been in business in that market?

Ans. Since November, 1852.

Int. 3. Were you ever clerk of that market; if yea, from what time to what time?

Ans. I was appointed clerk in the year 1858, about the middle of September or the first of October. I continued from that time till about the latter part of January or the middle of February, 1862.

Int. 4. While you were clerk of the market, did you have control of, and use, a cellar under the market as clerk, or otherwise? If yea, state its number, if it had any, or otherwise describe its location.

(Objected to.)

Ans. There was a cellar that I had control of as clerk. The entrance in Centre street to this cellar was about four hundred feet south of Broome street, used by the sweepers of the market to keep brooms and other appurtenances in used in cleaning the market. If the cellar had a number, I don't know of any.

Int. 5. How many cellars were there, if any, between the cellar and Broome street?

260 (Objected to as to form and substance.)

Ans. One between; this was the second cellar.

Int. 6. What party or parties were using this cellar when you became clerk?

(Objected to as before.)

Ans. Mr. Thomas Wood and some two or three other parties; I don't know their names and have no recollection of who they were.

Int. 7. What use did they make of it?

(Objected to as to form and substance.)

Ans. They used it for keeping barrels, boxes, and baskets. Mr. Wood used it for to keep oysters and clams.

Int. 8. Who else, if any one, made use of the cellar while you were clerk?

(Objected to as to form and substance.)

Ans. Mr. Racey; J. H.

Int. 9. About how old a man is the J. H. Racey whom you know?

Ans. A man of about my age.

Int. 10. While you were clerk of the market, state what articles of property you saw in that cellar.

(Objected to as to form and substance.)

Ans. I saw barrels, brooms, oysters, and rails used for to hang meat on, belonging to myself; and an ice-box belonging to Mr. Racey. Among other things, there was a machine, belonging to Racey, that he had to grind ice with.

Int. 11. Where was the ice-box you speak of located in that cellar?

(Objected to.)

Ans. It was on the south side of the cellar, fronting on Centre street, right inside of the entrance to the cellar. It was to the right hand of the door as you enter, about eighteen inches or two feet from the side of the door as you go in. It backed up against the wall on the south side.

Int. 12. How far was it located from the cellar-wall next Centre street? State as nearly as you can.

261 Ans. It might be adjoining the west wall or a foot or eighteen inches from it. I don't recollect.

Int. 13. Describe this box as to size.

(Objected to.)

Ans. It was a box in the neighborhood of five feet high, about four feet or four and a half feet wide, and about six to eight feet long, with a door that dropped down from the top. The hinges of the door were about three feet from the bottom. It was a box made of thick boards, or inch or inch and a quarter plank. It seemed to be, from the outer lining to the inner lining, a space of about four inches. Whether it was stuffed with saw-dust or charcoal, or anything of that kind, I know nothing.

Int. 14. What was the length of the door you speak of, and its thickness?

(Objected to as to form and substance.)

Ans. The same length of the box, I suppose. The thickness of the door was about inch or inch and a quarter stuff.

Int. 15. How was this door opened?

(Objected to.)

Ans. It seemed to open from the top, and drop down towards the ground.

Int. 16. Have you seen the inside of that box at any time?
(Objected to as to form and substance.)
Ans. I think I have.
Int. 17. What, if anything, did you observe inside the box?
(Objected to as to form and substance.)
Ans. I saw some ice in there ground up or broken in small pieces, and some fish covered over with the ice so broken; that's all.
Int. 18. Did you see any perpedicular metallic tubes or pipes inside of the box?
(Objected to as to form and substance.)
Ans. No.
Int. 19. On what did the box rest?
(Objected to as to form and substance.)
Ans. On a platform made of boards.
262 Int. 20. How far was the platform from the ground?
(Objected to as to form and substance.)
Ans. I don't know. I think it was about from four to six inches.
Int. 21. What, if anything, was placed at either side of this box?
(Objected to as to form and substance.)
Ans. The walls on the south side; on the east side, nothing; on the west side, I don't think there was anything except the wall, as I stated before, and I am in doubt about that; and on the north side, nothing.
Int. 22. What was the difference between the thickness of the door of the box and the thickness of the walls of the box?
(Objected to as to form and substance.)
Ans. The difference was from two and three-fourths inches, from that to three inches.
Int. 23. Was there any other door opening into the box besides the door you have mentioned?
(Objected to as to form and substance.)
Ans. None that I saw or know of.
Int. 24. What was the width of this cellar next to Centre street?
(Objected to as to form and substance.)
Ans. The width, I think, as near as I can judge, from twelve to sixteen feet.
Int. 25. What was the length of the cellar?
(Objected to as to form and substance.)
Ans. From twenty to twenty-five feet length, running through from Centre street to Centre Market Place, running east and west.
Int. 26. Was any change made in the depth of this cellar by you or any one while you were clerk of the market?
(Objected to as to form and substance.)
Ans. None that I know of; certainly not any by me.
Int. 27. Did any parties hire any part of this cellar from you while you were clerk of the market; if yea, who? What rent did they pay?
(Objected to as to form and substance.)
263 Ans. I hired the cellar to nobody when I was clerk. Mr. Wood was a tenant in a part of this cellar by authority from the previous clerk. I believe I collected about two dollars' rent of him during the whole of my clerkship there. I gave Mr. Racey the privilege of occupying the cellar in common with Mr. Wood and the sweepers of the market.
Int. 28. Did Mr. Racey pay you any rent while you were clerk of the market for that cellar or any part of it?
(Objected to as to form and substance.)
Ans. None at all.

Int. 29. What other property, if any, besides what you have named, did J. H. Racey have in that cellar while you were clerk?

(Objected to as to form and substance.)

Ans. He had what seemed to me to be fish-barrels—salt-fish barrels, and dry salt codfish. Whether there was anything or not in the barrels, that I don't know.

Int. 30. What use did Mr. Racey make of this ice-box which you have already described?

(Objected to as to form and substance.)

Ans. I think he used it to keep fresh fish in; nothing else that I know of.

Int. 31. What stands did Mr. Racey occupy in that market?

(Objected to as to form and substance.)

Ans. He occupied two fish-stands that he is adoing business on now.

Int. 32. Have you been to those stands or premises that Mr. Racey occupied in the market while you were clerk?

(Objected to as to form and substance.)

Ans. I have.

Int. 33. Did you see any ice-boxes in those stands or premises besides the one you have named as being in the cellar; if yea, how many?

(Objected to as to form and substance.)

Ans. I think I saw one.

Int. 34. Whereabouts was that?

(Objected to as to form and substance.)

264 Ans. Behind his stand, or at the north end of his stand.

Int. 35. Did you ever see the inside of that ice-box?

(Objected to as to form and substance.)

Ans. Not that I can recollect of.

Int. 36. Did you ever see it open or opened?

(Objected to as to form and substance.)

Ans. Never that I know of.

Int. 37. Where was the lid to this box placed, and was there more than one lid?

(Objected to as to form and substance.)

Ans. I know of none but one. To the best of my knowledge the lid opened from the top in the same way an ordinary box with hinges would open.

Int. 38. Did you know a man by the name of Moses Raynor?

(Objected to.)

Ans. Yes.

Int. 39. State whether or not he has done any business or work in Centre Street Market while you were clerk.

(Objected to as to form and substance.)

Ans. He was a watchman in the market, and sometimes opened oysters there for Mr. Wood.

Int. 40. State whether or not he, at any time while you were clerk, dug down this cellar some distance; if so, how much?

(Objected to as to form and substance.)

Ans. I don't know of his digging it down while I was clerk.

Int. 41. What parties were using this cellar when you ceased to be clerk?

(Objected to as to form and substance.)

Ans. When I ceased to be clerk, Mr. Racey had it and the sweepers of the market.

Int. 42. Prior to your ceasing to be clerk, what use had you made of the cellar spoken of?

(Objected to as to form and substance.)

Ans. I used it to store brooms and to store meat-rails that I used to hang the meat on.

265 Int. 43. At any time while you were clerk, did Mr. Racey have the exclusive use of that cellar?

(Objected to as to form and substance.)

Ans. No.

Int. 44. Have you been in business in that market since you commenced in 1852?

(Objected to as to form and substance.)

Ans. Yes.

Int. 45. What business has Mr. Racey been doing in that market while you have been there?

(Objected to as to form and substance.)

Ans. He has been engaged in the fish-business, oyster-business, and at present in the fish, poultry, game, and, I believe, early vegetables now.

Int. 46. Do you know of his having for sale, and selling in that market, preserved, artificially-frozen, fresh fish out of the season of their being caught, meaning by that a season of the year different from the season in which they were caught?

(Objected to as to form and substance.)

Ans. Of my own knowledge, I do not know.

Int. 47. About how long before you ceased to be clerk were you in that cellar? State as near as you can.

(Objected to as to form and substance.)

Ans. Well, it might have been the previous summer, or late in the previous fall. I have got no definite recollection in regard to the time.

Int. 48. How do you fix the date of your appointment as clerk and the date of your ceasing to be clerk of that market?

(Objected to as to form and substance.)

Ans. Knowing it to be about the time of Alderman Tuomey, of the 14th ward, being elected alderman in the year 1857, and taking his seat about the 1st of January, 1858. By reference to a notice of my supersedure, as clerk, by the city inspector, dated January 31, 1862, I fix the date of my removal.

Int. 49. How do you fix the date of your appointment as being in September or October, 1858?

266 (Objected to as to form and substance.)

Ans. By reference to a book in the comptroller's office, showing that I received a salary as clerk of the market in November of that year, for the first time that I was paid my salary for the services rendered for the month previous.

Cross-examined de bene esse:

Cross-int. 1. Was the cellar referred to divided into two parts?

Ans. At the time of my appointment first, I think it was.

Cross-int. 2. Did you know of Mr. Racey occupying any other stands than those which he now occupies in Centre Market?

Ans. Not during my time as clerk, I don't.

Cross-int. 3. At any time before or since, did you know of his occupying any other stand?

Ans. I think he did occupy some other stands, but I cannot describe the place they were in nor the numbers.

Cross-int. 4. Did you ever particularly examine any of Mr. Racey's ice-boxes?

Ans. No, sir, I never examined any of them.

Cross-int. 5. Your statements as to their size and make are based upon your memory of them, as casually observed, not particularly examined, are they not?

Ans. Yes.

Cross-int. 6. How often, during the years that you were clerk, were you called to go into the cellar referred to? How often did your business call you there?

Ans. Well, my business did not call me in there but very seldom; probably half a dozen times during my clerkship. In connection with the clerkship, as regards keeping the brooms there, and the appurtenances for cleaning the market, the sweepers had occasion to go in and out more than I did.

Cross-int. 7. As a simple matter of memory, how many times were you in that cellar during your clerkship?

Ans. Probably half a dozen times.

Cross-int. 8. When first was your attention called to the size,
267 make, and general description of the ice-box which you have described, with reference to your giving any description of it?

Ans. Well, as regards the date of the year, that I can't say. I have no memory as regards the year, or the time of the year; but in this way I will state it: Seeing the cellar open, and having occasion to go down there on some private business, I saw some of Mr. Racey's help to work with the ice-grinding machine, grinding ice there, and from the fact of their grinding the ice there I saw the ice-box.

(The above answer not being responsive to the question, the witness' attention is called by counsel for respondents to the question, and he is asked to answer it, and witness says:)

I was invited by a gentleman unknown to me to call down in Broadway, to an office located in Broadway somewhere near Trinity Church, if my memory serves me right, some time in the latter part of the year 1868, where I was introduced to a gentleman of the name of Riddell, I think, and was there questioned by him as regards an ice-box used by Mr. Racey in the cellar spoken of.

(Counsel for complainant objects to the answer, as the question does not call for it.)

After stating to him what I knew of the ice-box, its size, and so forth, he asked me if I would object to make affidavit of that fact, to which I answered no; and I there did describe the box and swore to the statement I there made. That was the first time I described the box.

MATHEW J. TUOMEY.

Adjourned to April 2, 1869, at 9 a. m.

268 *Deposition of Patrick Shields, taken, subscribed, and sworn to before R. E. Stillwell, examiner.*

APRIL 2, 1869.

Counsel for respective parties present.

PATRICK SHIELDS, being duly sworn, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Patrick Shields; thirty-six years of age; 65 Mulberry st., New York City; fisherman.

Int. 2. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market; and, if yea, how long have you known him?

Ans. Yes; I have known him about twelve years.

Int. 3. Have you ever been in his employ; if yea, when was it, and how long were you employed by him?

Ans. Yes; in November or December, 1863. I was employed by him three days.

Int. 4. What labor did you do for him?

Ans. Two of the days I was in his cellar under the market skinning eels; on the third day I worked at his stand in Centre Market.

Int. 5. In which month did you work in the cellar skinning eels?

Ans. I cannot say whether it was in November or December; either one.

Int. 6. Were the three days' work you speak of at different times or together?

Ans. They were three consecutive days.

Int. 7. Give me the location of the cellar in which you worked with reference to Centre street and Broome street.

Ans. The second cellar this side of the entrance to his stand on Centre street.

Int. 8. Counting from Broome street, which was the number of the cellar?

Ans. I cannot tell the number of the cellar.

269 Int. 9. How many cellars were there between this cellar and Broome street, under that market?

Ans. Only one that I know of.

Int. 10. What articles were in that cellar that you observed while you worked there skinning eels?

Ans. Nothing but a tank where he kept eels, and barrels laying around.

Int. 11. Whereabouts in the cellar was the eel-tank you speak of?

Ans. In the rear of the cellar.

Int. 12. How wide was the cellar next to the entrance on Centre street?

Ans. I should judge it would be about twelve feet wide.

Int. 13. How many feet back did it extend from the side next Centre street?

Ans. I should judge it would be about twenty or twenty-five feet.

Int. 14. Describe the eel-tank as to size.

(Objected to as to form and substance.)

Ans. I should judge it would be about ten feet long and four feet wide. It was about four feet high.

Int. 15. What, if anything, was placed around it, or under it, or next to it, on any side?

(Objected to as to form and substance.)

Ans. Steps going up to reach to taking out the eels from the tank. I do not know what the eel-tank rested on.

Int. 16. How far above the bottom of the cellar was the bottom of the eel-tank, if you observed?

(Objected to as to form and substance.)

Ans. I should think about a foot and a half or two feet.

Int. 17. How do you fix the date or time of your doing this work as being in November or December, 1863?

Ans. On account of it being election-time.

Int. 18. What election do you refer to, and how does that enable you to determine the time of your doing this work?

Ans. It was the election for city officers, and a gentleman of my acquaintance ran for office at the time. His name was Joseph Shannon. The day that I went to work at Mr. Racey's stand I went to work

270 there to replace one of his men who had gone to attend the election.

Int. 19. For what office was this friend of yours, Mr. Joseph Shannon, a candidate?

Ans. For the office of alderman of the Fourteenth ward, city and county of New York.

Int. 20. Is there any other circumstance that enables you to fix the time of your work as being in November or December, 1863, except the election you speak of; if yea, what was it?

Ans. I know it from the fact of it being in the fall or winter after my discharge from the Army. I was discharged from the Army in March, 1863.

Int. 21. What Army do you refer to, and when did you enlist in the Army?

Ans. I enlisted on the 15th of July, 1862, in the Union Army.

Int. 22. Do you know the firm of Middleton, Carman & Co., fish-dealers, Fulton Market, New York City?

Ans. Yes.

Int. 23. State whether or not you have seen a freezing-apparatus, or freezer, for freezing fresh fish, belonging to them at any time. If yea, state where you saw it, and when.

Ans. Yes. I saw it at 134 Beekman street, I think, in May, 1862.

Int. 24. Have you seen it since, and what, if anything, have you had to do with it at any time?

Ans. Yes, I have seen it since, and had charge of it, on and off, since I came home from the Army, until about a year ago.

Int. 25. Did you have anything to do with the working of it? If yea, when did you first work it, and how soon after you came home from the war did you work it?

Ans. I worked it after it was first built, and in the same month after I came home from the war.

Int. 26. With what was it charged when in operation?

(Objected to as to form and substance.)

Ans. With ice mixed with salt.

Int. 27. Was anything frozen in it; if so, what?

271 (Objected to as to form and substance.)

Ans. Salmon, bass, trout, shad, prairie-hens, quail, and so forth.

Int. 28. At the time you worked in Mr. Racey's cellar that you have mentioned, was there any freezing-apparatus, or freezer, for freezing fish, in that cellar? If yea, state what.

(Objected to as to form and substance.)

Ans. None.

Int. 29. The day you worked at Mr. Racey's stand in the market, what did you do there?

Ans. I helped to dress or clean fish.

Int. 30. Do you know what kinds of fish were sold at Mr. Racey's stand at that time?

(Objected to as immaterial.)

Ans. Bass, cod-fish, halibut, haddock; that is about the principal kind of fish sold at that time of the year. There were other kinds that I cannot remember now.

Int. 31. Had you any opportunity of seeing what kinds of fish were sold when you worked for him?

(Objected to as entirely immaterial.)

Ans. Yes.

Int. 32. Were any preserved artificially-frozen fresh fish sold out of

their season at Mr. Racey's stand or premises in Centre Market while you worked there?

Ans. None.

Cross-examination, waiving no objection taken to specific questions and interrogatories upon subjects objected to in the examination-in chief, put de bene esse:

Cross-int. 1. In whose employment are you now?

Ans. I am not employed by anybody.

Cross-int. 2. What do you do?

Ans. I have not done anything the last two months.

Cross-int. 3. How came you here as a witness?

Ans. Mr. Piper and Mr. Carman called my attention to this affair. Mr. Piper requested me to come here.

272 Cross-int. 4. What Mr. Carman do you refer to?

Ans. Mr. Carman of the firm of Middleton, Carman & Co.

Cross-int. 5. Did he speak to you first about it?

Ans. Yes.

Cross-int. 6. While you were in his employ?

Ans. No.

Cross-int. 7. When did he first speak to you about it?

Ans. I believe it is a year or so ago.

Cross-int. 8. What were you doing then?

Ans. I was speculating in green turtle, terrapin, and whatever I could make money of.

Cross-int. 9. Did you have any place of business?

Ans. No.

Cross-int. 10. You sold most of your articles to Middleton, Carman & Co., did you not?

Ans. No, sir.

Cross-int. 11. Did you sell any to them?

Ans. No.

Cross-int. 12. Did you buy of them?

Ans. Yes.

Cross-int. 13. On credit?

Ans. Yes.

Cross-int. 14. How much credit did they give you at any one time?

Ans. From $5, $10, to $20 at a time.

Cross-int. 15. Can't you fix definitely the time when Mr. Carman first spoke to you about this?

Ans. To the best of my opinion it was a year ago last fall or winter.

Cross-int. 16. Before that time, had any one called your attention to the fact of your being at Mr. Racey's place, or spoken to you about it?

Ans. No.

Cross-int. 17. When Mr. Carman first spoke to you about it, did you tell him the time you were down there?

Ans. I did.

273 Cross-int. 18. Did you tell him it was in November or December, 1863?

Ans. I did.

Cross-int. 19. You did not have to stop and think about it all?

Ans. No.

Cross-int. 20. Who else did you work for in November, 1863?

Ans. I worked for Middleton, Carman & Co. about that time. In November I don't think I worked for anybody.

Cross-int. 21. Don't you know whether you did or not?

Ans. No; I can't tell.

Cross-int. 22. Why can't you tell?

Ans. Because it is so long; I did not keep any account whether I worked or not for any parties at that time.

Cross-int. 23. Who did you work for in December, 1863?

Ans. I think I worked for Middleton, Carman & Co. part of the time.

Cross-int. 24. Do you know whether you did or not?

Ans. I could not positively say.

Cross-int. 25. Why can't you positively say?

Ans. Through my working for the firm so often, and getting discharged over again, and hired, I did not keep a date.

Cross-int. 26. Do you remember anybody for whom you worked in December, 1863, that you are willing to swear to?

Ans. No.

Cross-int. 27. Do you remember any one in November?

Ans. No.

Cross-int. 28. Did you keep any account of your work done in any month in the year 1863?

Ans. No.

Cross-int. 29. How many times did Middleton, Carman & Co. discharge you during the year 1863?

Ans. I cannot say.

Cross-int. 30. Is it so many times that you cannot remember?

Ans. It may be.

Cross-int. 31. What did they discharge you for?

Ans. For not attending properly to their business.

274 Cross-int. 32. What was the cause of that inattention on your part?

Ans. Being out late nights, and could not get up in the morning to go to work.

Cross-int. 33. Do you remember any person for whom you worked in January, 1864, that you are willing to swear to?

Ans. No.

Cross-int. 34. At any time when Middleton, Carman & Co. discharged you, was anything said by them, or any of them, in regard to having lost or missed things through your inattention? Had anything been taken or stolen by anybody?

Ans. No.

Cross-int. 35. Do you remember what time you arrived in New York after you were discharged from the Army?

Ans. On or about the middle of March.

Cross-int. 36. What was the first employment you had after your arrival?

Ans. I went to work for Middleton, Carman & Co. first.

Cross-int. 37. What month?

Ans. It was the latter part of March or the first of April.

Cross-int. 38. How long did you work for them before you were discharged?

Ans. Two or three months, as near as I can judge.

Cross-int. 39. Do you, in fact, remember that you worked there a full month without being discharged?

Ans. Yes.

Cross-int. 40. How much longer?

Ans. I do not remember how much longer at that time. I have worked for them three months at a time.

Cross-int. 41. Where did you live in 1863?
Ans. 104 Bayard street, New York City.
Cross-int. 42. Did you live there during the entire year?
Ans. Yes.
Cross-int. 43. Board or keep house?
Ans. Keep house.
Cross-int. 44. While you were with Middleton, Carman & Co., did you know of their putting fruit into their apparatus in Beek-
275 man street?
Ans. No.
Cross-int. 45. Or vegetables?
Ans. No.
Cross-int. 46. They used to freeze salmon there, or only keep it when it came to them in a frozen state?
Ans. They used to freeze salmon there.
Cross-int. 47. When first did you ever know of their freezing salmon there?
Ans. In 1862.
Cross-int. 48. What month?
Ans. Part of May and June.
Cross-int. 49. The latter part of June or the first part?
Ans. I don't remember.
Cross-int. 50. How can you say it was June?
Ans. I know from the fact that it was not a great while after the freezer was built.
Cross-int. 51. Were you there when it was built?
Ans. Yes.
Cross-int. 52. You feel quite sure that they put them in in May, too?
Ans. I could not swear they did, only that they put them in between the time it was built and finished and the time I went to the war.
Cross-int. 53. What regiment did you enlist in?
Ans. 164th New York Volunteers, Company H.
Cross-int. 54. For how long a period did you enlist?
Ans. For three years or during the war.
Cross-int. 55. How came you to be discharged?
Ans. I was discharged through disability.
Cross-int. 56. Will you swear that you did not work continuously for Middleton & Carman for more than a year after your return from the war?
Ans. Yes.
276 Cross-int. 57. When were you first discharged by them after your return from the war?
Ans. I could not say.
Cross-int. 58. Can you give the year or month?
Ans. I can give the year—1863. I could not give the month.
Cross-int. 59. Was one of the reasons which they gave for discharging you that you had got into the habit of drinking too much?
Ans. Yes, one of the reasons, and not being able to come to work next day.
Cross-int. 60. What was the name of the man whose place you took at Racey's?
Ans. I do not know.
Cross-int. 61. Did you ever know?
Ans. I never knew him before then. I have seen him since.
Cross-int. 62. Where were you at work at the stand, front or rear part?
Ans. Rear part.

Cross-int. 63. Did a partition separate you from the sales part?
Ans. I think so.
Cross-int. 64. What time did you go to work?
Ans. I went to work there about half past five in the morning.
Cross-int. 65. You did not sell, or assist in selling, did you?
Ans. No.
Cross-int. 66. Are you positive that you worked two days skinning eels?
Ans. I am positive that I was there two days, but am not positive that I was there the whole of the two days.
Cross-int. 67. You can't remember whether you were the whole of the two days or not?
Ans. I was there until along about three or four o'clock.
Cross-int. 68. Had you ever worked in the cellar before?
Ans. No.
Cross-int. 69. Nor since?
Ans. No.
277 Cross-int. 70. Had you ever been in the cellar before?
Ans. No.
Cross-int. 71. Nor since?
Ans. Only to stand on the steps of the cellar and look into the blind door—a door like a window-blind, as near as I can come to it.
Cross-int. 72. When was that?
Ans. Some part of last summer. I could not tell what month.
Cross-int. 73. Who was with you then?
Ans. No person.
Cross-int. 74. Did any person request you to go?
Ans. No.
Cross-int. 75. That was after Carman had spoken to you about it, was it not?
Ans. Yes.
Cross-int. 76. That's why you went, was it not, because he had spoken to you about it?
Ans. No. I was passing that way, and I thought about these freezers at the time, and I stopped to look in to see if I could see anything of them.
Cross-int. 77. Did you make any charge on any book, or keep any memorandum, of the time you worked for Racey?
Ans. What do you mean by charge? I did not make any charge, nor did I keep any memorandum.

Re-examination:

Int. 1. When you looked into the cellar last summer, what did you see there?
Ans. I think I saw a freezer on each side of the cellar-door—one on each side.
Int. 2. When did you last work for Middleton, Carman & Co.?
Ans. About two years ago.
Int. 3. When did you go to the war? State the month that you left the city.
(Objected to as not responsive to anything called out by the cross-examination.)
278 Ans. In November, 1862. I left Staten Island in that month to go to the war.
Int. 4. You have stated that you are out of business at the present time. Will you state how long you have been out of business, and the occasion of it?
(Objected to.)

Ans. I am out of business going on four months. Part of the time I could not get anything to do, and part of the time sick.

Int. 5. What is the state of your health now?

Ans. Bad.

Int. 6. Have you been sworn to testify in this case? If yea, state when.

Ans. About half past ten a. m. to-day.

PATRICK SHIELDS.

Adjourned to April 3, at 9 a. m.

Deposition of Stephen Fausett, taken, subscribed, and sworn to before R. E. Stilwell, examiner.

SATURDAY, *April* 3, 1869.

Present, counsel for the respective parties.

STEPHEN FAUSETT, called and sworn as a witness on the part of the complainant, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Stephen Fausett; age, forty; 64 South Fifth st., Williamsburgh; I work in the fish-market, Fulton.

Int. 2. Do you know the firm of Middleton, Carman & Co.?

Ans. Yes.

279 Int. 3. Have you been employed by the firm of Middleton, Carman & Co.; if so, how long?

Ans. I have been employed by Middleton, Carman & Co., and by their predecessors, since 1851.

Int. 4. Do you know of the firm of Middleton, Carman & Co. having a preserving-apparatus, or freezer, for freezing fish at their store-house in Beekman street, in this city? If yea, state where it is, how long you have known about it, and what, if anything, you had to do with it while in their employ.

(Objected to as to form and substance.)

Ans. Yes; they had it at 134 Beekman street; I think that is the number; I knew about it, I think, since the summer of 1862 or 1863, I can't say positively; I had the charging of it.

Int. 5. Did you know of its being built?

Ans. I do.

Int. 6. Did you see it while building?

Ans. Yes.

Int. 7. How much of the time since it was built have you attended to the charging or working of this freezer?

Ans. I attended to the working of it almost ever since, with the exception of the last two or three years; another man has attended to it off and on.

Int. 8. Have fish been frozen in that freezer; if so, what kinds?

(Objected to.)

Ans. Salmon, bass, Spanish mackerel, bluefish, and various kinds of fish.

Int. 9. Do you know of their having a temporary freezing-apparatus in Beekman street prior to the one just named?

(Objected to.)

Ans. Yes.

Int. 10. How long was that in use before the one first named was built?

(Objected to.)

Ans. It might have been used twelve months or more, perhaps; I can't say exactly how long it was.

280 Int. 11. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market, New York; and, if so, how long have you known him?

Ans. I do; I have known him fourteen or fifteen years, I guess.

Int. 12. State whether or not at any time Mr. Racey has seen either or both of the freezing-apparatuses before named at 134 Beekman street.

(Objected to.)

Ans. Yes.

Int. 13. State how you know that he has.

(Objected to as to form and substance.)

Ans. Because he has been in the store-room the same time with me.

Int. 14. How many different times has that occurred with reference to the freezer last built?

(Objected to as to form and substance.)

Ans. I think two or three times.

Int. 15. State whether or not he saw the interior of the freezer?

(Objected to as to form and substance.)

Ans. Well, I should judge he did.

Int. 16. State the circumstances that lead you to judge that he did.

Ans. Because the doors were left open when I went in for the fish; he stood there in the store-room, and I suppose he saw the interior of the freezer.

Int. 17. How near did he stand to the freezer, and what was he there for?

(Objected to as to form and substance.)

Ans. He was close to the freezer; he was there for fish.

Int. 18. Was any fish sold or delivered to him by you out of this freezer while he was there; if yea, what kind of fish, and what was their condition when delivered to him with reference to being frozen or unfrozen?

(Objected to as to form and substance.)

Ans. Yes; salmon, and I think he had Spanish mackerel, but of that I will not be positive; they were frozen.

281 Int. 19. How many times have you sold or delivered him frozen fresh fish out of either of those freezers? State as near as you can.

(Objected to as to form and substance.)

Ans. Two or three times.

Int. 20. State whether he examined the fish as you delivered them to him, and what he did with them.

(Objected to as to form and substance.)

Ans. I can't say whether he examined the fish. He put them into his cart, I suppose.

Int. 21. Did he take them in his hands?

(Objected to as to form and substance.)

Ans. He took the salmon in his hands.

Int. 22. State whether you delivered him any frozen fish out of the first temporary freezer.

(Objected to as to form and substance.)

Ans. I think I have delivered him Spanish mackerel out of the first freezer.

Int. 23. Was the freezer opened in his presence at the time you delivered the fish to him?

(Objected to as to form and substance.)

Ans. I think I took Spanish mackerel from the first freezer to him at Centre Market. At the time I delivered the salmon to him, the freezer was open in his presence.

Int. 24. About how long after the second freezer was built was it that you first delivered to Mr. Racey the frozen salmon in the way you have stated? State as near as you can.

(Objected to as to form and substance.)

Ans. I can't say whether it was the same summer it was built or the following summer.

Int. 25. Within what time from the time of its being built were they first delivered?

(Objected to as to form and substance.)

Ans. I think, if I remember right, it was built in 1862, as near as I can recollect. I think that in the following fall he had fish from it.

282 Cross-examined, without waiving any objection to the interrogatories-in-chief, and upon the subjects objected to, de bene esse:

Cross-int. 1. Who first spoke to you about being a witness in this case?

Ans. Mr. Carman, I think.

Cross-int. 2. What Mr. Carman?

Ans. Mr. G. Carman, of the firm of Middleton, Carman & Co.

Cross-int. 3. When did he first speak to you about it?

Ans. I think it was last Thursday or Friday.

Cross-int. 4. Had your attention ever been called to it before?

Ans. No.

Cross-int. 5. Did you make any memorandum of the time that you delivered this fish to Mr. Racey?

Ans. I did not.

Cross-int. 6. I suppose you never thought of it from the time you delivered the fish until Carman spoke to you about it?

Ans. No.

Cross-int. 7. You were delivering fish from those freezers every day, I suppose, during the season?

Ans. Yes.

Cross-int. 8. Do you remember the circumstance of delivering fish from those freezers to any other person besides Mr. Racey in 1862, 1863, or 1864?

Ans. Mr. Racey came in one afternoon and got a salmon. I do not remember the circumstance particularly of delivering fish to any other person besides Mr. Racey.

Cross-int. 9. Do you remember, so as to be enabled to swear positively, what year that was that Racey got the salmon in the afternoon?

Ans. I would not swear positively whether it was in 1862 or 1863.

Cross-int. 10. Will you swear positively it might not have been in 1864?

283 Ans. No, I could not swear positively what year it was. It was either in 1863 or 1864. I think it was in 1863.

Cross-int. 11. Do you remember what month it was?

Ans. I think it was October or November, or somewheres thereabout.

Cross-int. 12. Will you say it might not have been in April?

Ans. When I delivered it to him it was not in April. I think it was in October or November.

Cross-int. 13. Do you know that to be a fact?

Ans. Yes.

Cross-int. 14. How do you know it?

Ans. Well, because I think we had the Spanish mackerel about that time of the year.

Cross-int. 15. Is that the only way you know it?

Ans. That is about the only way I know it.

Cross-int. 16. Did you not have Spanish mackerel there at other times of the year?

Ans. Yes, we do.

Cross-int. 17. How many Spanish mackerel did you deliver him?

Ans. I could not say.

Cross-int. 18. Did he pay for them?

Ans. No.

Cross-int. 19. Did you weigh them?

Ans. I would not swear positively that I weighed them.

Cross-int. 20. Who did weigh them?

Ans. I could not say who weighed them. They were taken from the store across to the market and weighed.

Cross-int. 21. Did you take them across?

Ans. Yes, I think I took them across.

Cross-int. 22. Why do you say "I think?"

Ans. Well, because there was another boy there, and he might have taken them across.

Cross-int. 24. You would not undertake to say the other boy was there or not, would you?

Ans. Yes, I would at one time when Mr. Racey was there.

284 Cross-int. 25. What time was that?

Ans. I think that was in October or November.

Cross-int. 26. What did he have then?

Ans. Salmon.

Cross-int. 27. Did you carry that across to the market and weigh it?

Ans. I believe somebody carried it. I suppose it was weighed.

Cross-int. 28. Do you know?

Ans. No. I would not swear that it was weighed.

Cross-int. 29. Have you ever delivered fish to Mr. Racey since 1864?

Ans. No, I think not.

Cross-int. 30. Are you positive?

Ans. I am positive I have not.

Cross-int. 31. What makes you positive of that?

Ans. Because I have not been driving the wagon these last six or seven years.

Cross-int. 32. How many times has Mr. Carman talked to you about this case?

Ans. He has not talked to me at all about the case, only last Thursday or Friday, I think.

Cross-int. 33. Did you ever hear him speak about it before to anybody?

Ans. No.

Cross-int. 34. You knew that Mr. Piper had a lawsuit about the freezer, did you not, before last Thursday?

Ans. No; not before Mr. Carman spoke to me about it.

Cross-int. 35. Did you ever hear any one speak about it before last Thursday?

Ans. No.

Cross-int. 36. Did any one refresh your memory as to the time you delivered these fish to Racey?

Ans. No.

Cross-int. 37. You say, in answer to the 18th direct interrogatory, "I think he (Racey) had Spanish mackerel." Did you say, "I think," because you were not positive of it?

Ans. I think, because I am not positive of it.

STEPHEN FAUSETT.

285 *Deposition of Pierce Van Wyck, taken, subscribed, and sworn to before R. E. Stilwell, examiner.*

PIERCE VAN WYCK, called and sworn as a witness on the part of the complainant, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Pierce Van Wyck; fifty-seven years of age; reside in New York City, and am a butcher by trade.

Int. 2. Were you, at any time, clerk of the Centre Market in the city of New York? If yea, from what time to what time?

Ans. I was there from February 1, 1862, till July, 1863.

Int. 3. Did you, as clerk of the market, have control of a cellar under the market? If yea, what cellar was it?

Ans. I did. It was the second cellar from Broome street.

Int. 4. On what street was the entrance to the cellar.

Ans. Centre street.

Int. 5. While you were clerk, did you lease that cellar to any person; and, if so, who?

(Objected to.)

Ans. I did; to Mr. Racey.

Int. 6. What was Mr. Racey's full name and business at that time?

Ans. Joseph Racey, I think. He was in the fish business.

Int. 7. Did he occupy any stands in the market; and, if yea, what stands?

Ans. He did. I could not say what number the stand was.

Int. 8. Has Mr. Racey a middle name, or initial?

Ans. Not that I know of. He was always called Joseph Racey.

Int. 9. About how old a man is he?

Ans. About forty-five.

Int. 10. Which side of the market were his stalls; next to what street?

286 Ans. Next to Centre street.

Int. 11. How long have you known Mr. Racey?

Ans. I have known him fifteen or twenty years, but not personally acquainted with him during all that time.

Int. 12. While you were clerk of the market, what had he to do with the cellar you have mentioned?

(Objected to.)

Ans. He used to keep his fish down there.

Int. 13. Was there any other Joseph Racey occupying this cellar while you were clerk beside the person you have spoken of?

(Objected to.)

Ans. No, sir.

Int. 14. When did Mr. Racey commence occupying this cellar while you were clerk, and on what terms?

Ans. He had occupied it while I was clerk, and before. I leased it to him for $50 a year, or $12.50 a quarter.

Int 15. At what time, or how long after you became clerk, did you lease him the cellar?

Ans. About two weeks after I became clerk, in February, 1862.

Int. 16. Were you in that cellar prior to leasing it to Mr. Racey, and after you became clerk?

(Objected to.)

Ans. Yes, sir.

Int. 17. What articles did you see in that cellar?

(Objected to.)

Ans. I saw an ice-box and three or four casks, what they salt meat in. I saw two or three brooms there.

Int. 18. Where was the ice-box situated in that cellar?

Ans. It was on the right-hand side as you go in the cellar, close by the door.

Int. 19. How near to the walls of the cellar next Centre street, and the wall on the south side of the cellar?

(Objected to.)

Ans. That I can't answer.

Int. 20. About how near?

Ans. I could not say.

287 Int. 21. What was placed around or near to this box, if anything?

(Objected to.)

Ans. Nothing at all.

Int. 22. Did you see an eel-tank in this cellar?

(Objected to.)

Ans. No, sir.

Int. 23. How many times were you in this cellar while you were clerk, prior to leasing it to Mr. Racey?

Ans. Two or three times. Business called me in there.

Int. 24. When you became clerk what other parties were using this cellar?

(Objected to.)

Ans. I do not know.

Int. 25. Where did the sweepers of the market store their brooms or other articles for cleaning the market at the time you were clerk?

(Objected to.)

Ans. They used to live opposite the market, and their brooms with them.

Int. 26. Were any of their brooms stored at any time or placed in this cellar while you were clerk?

Ans. No, sir; they never did. They used to take them home with them.

Int. 27. I refer to the time prior to your leasing it to Mr. Racey, that interval of a fortnight.

Ans. They did not.

Int. 28. Did Mr. Racey pay you rent for that fortnight?

Ans. No, I don't think he did. I think he started with the first of the month.

Int. 29. The first of what month?

Ans. The first of February.

Int. 30. From what date did Mr. Racey commence paying rent to you for the use of that cellar?

Ans. He occupied the cellar two weeks before I rented it to him. He commenced paying rent to me from the first of February to the first of May.

Int. 31. How long did he occupy this cellar under you?

288 Ans. From February 1, 1862, to July, 1863, when I left.

Int. 32. For how long a time did he pay you rent?

Ans. He paid me up to the next May, 1863, and the May and June, 1863, he has not paid me for.

Int. 33. Is the rent for those months still due?

Ans. Yes, sir.

Int. 34. How do you fix the time of your becoming clerk, and ceasing to be clerk, of that market?

Ans. The city inspector sent me two books up of the year 1862, and my name was printed on the outside as clerk.

Int. 35. Who was your immediate predecessor as clerk of that market?

Ans. Matthew Tuomey.

PIERCE V. WESSON.

(Adjourned to April 6th at 10 a. m.)

Deposition of George W. Wingate, taken, subscribed, and sworn to before R. E. Stilwell, examiner.

SATURDAY, *April* 10, 1869.

Present, counsel as before.

GEORGE W. WINGATE, called and sworn as a witness on the part of the complainant, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. George W. Wingate; almost twenty-nine years of age; reside at 210 East Thirtieth street, New York, and am a lawyer.

Int. 2. How long have you been a lawyer?

Ans. I was admitted to the bar when I was twenty-one; practised a little before; have been practising about ten years in New York, altogether.

Int. 3. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market, New York City? If yea, state when you first knew him, and how long have you known him?

289 Ans. I do. I first became acquainted with him at the end of 1859, or in February, 1860, and have known him ever since.

Int. 4. Do you know William H. Racey, formerly a fish-dealer in the same market? And, if yea, when did you first know him?

Ans. I do, and have known him the same length of time that I have his brother Joseph.

Int. 5. Do you know Joseph H. Racey, sen., of New York? And if yea, how long have you known him?

Ans. I do know him. I think I became personally acquainted with him on the 20th January, 1863, but I might have known him before.

Int. 6. Do you know George Moore, fish-dealer, in New York City? And if yea, how long have you known him?

Ans. I do, and I have known him since January, 1861.

Int. 7. Has Mr. Moore a partner in business to your knowledge? If yea, what is his name?

(Objected to.)

Ans. I think his present partner's name is Lamphier. He used to have another partner named Crandell. The firm-name used to be Moore, Lamphier & Crandell.

Int. 8. Have you at any time known fish-stands No. 15 and 17 in Centre Market, and the personal property used at those stands, and in connection therewith? If yea, state the first you knew of them, and how long you had any knowledge of them.

(Objected to, in form and substance, and because there has been no foundation laid for the introduction of this testimony.)

Ans. I do; I first became acquainted with those stands in 1860, in the beginning of the year, and I continued to be conversant with them until 1864.

Int. 9. Have you ever seen those stands and the property mentioned in the preceding question? If yea, how many times, and during what period of time?

(Objected to on the same grounds as the preceding question.)

290 Ans. I have. I was in the habit of going there frequently from 1860 to 1863, and occasionally up to 1864. It is impossible for me to say how many times I was there, but I should say at least twenty times. I have no way of forming an estimate.

Int. 10. When you first knew those stands, who owned the personal property used in connection with them?

(Objected to on the ground stated in objection to interrogatory 8.)

Ans. W'm H. Racey claimed to be the owner of everything at those stands except the permit for one of them from the city, which belonged to Joseph H. Racey, sen.

(Answer objected to.)

W'm H. Racey did business then under the firm-name of Racey & Co. The company was his brother, John Racey.

(The latter part of the answer objected to as not responsive.)

Int. 11. Have you ever owned the personal property at those stands and in connection therewith? If yea, state when and what property you owned. Give the items.

(Objected to on the same ground as interrogatory 8.)

Ans. I bought all the personal property connected with the stands and the business carried on there on the 20th of January, 1863, under a chattel-mortgage sale. They consisted of the following articles: Two fish-stands with white marble slabs, one ice-box, a lot of fish-tools, knives, and things of that kind, stoves, desk, stool, partition, looking-glass, gas-fixtures, clock, and some other small fixtures, and horse, cart, and harness.

Int. 12. What was the price paid?

(The same objection as to the preceding interrogatory.)

Ans. $127.50.

Int. 13. Who sold the property?

(The same objection as preceding.)

Ans. The sale was made by an auctioneer employed by Louis H. Vultee. His name was Bogert, I think.

Int. 14. For whom was the sale made, if you know?

(The same objection as to the preceding interrogatory.)

Ans. For George Moore, mortgagee.

Int. 15. How long did you own this property, and what became of it, if you know?

(The like objection.)

291 Ans. I held the property till the next day, when I sold it to Joseph H. Racey, sen.

Int. 16. Where was this property situated while you owned it?

(The like objection.)

Ans. It was all there at the stand, except the horse, cart, and harness, which I put at a livery-stable.

Int. 17. Whose interest in the property was sold at the time of your purchase?

(The like objection.)

Ans. W'm H. Racey's.

Int. 18. Did any other person have any interest in it at the time beside W'm H. Racey and Mr. Moore? If yea, state who and what.

(The like objection.)

Ans. I can only answer that question by stating the fact. The property had been purchased by W'm H. Racey at a sheriff's sale of the interest of Joseph H. Racey. Subsequently a creditor of Joseph H. Racey, having procured the appointment of a receiver of the property of the latter under supplementary proceedings, brought a suit in the name of the receiver, Joseph H. Racey, against W'm H. Racey, to have the sale to the latter set aside as fraudulent and void. This suit lasted from 1860 to 1863, and was finally decided in favor of the plaintiff. The receiver consequently claimed this property, which had during the pendency of the action been mortgaged to Mr. Moore, a third party, by W'm H. Racey, and Mr. Moore, claiming to be bona-fide mortgagee, forced the property to be sold under his mortgage.

(Answer objected to as giving hearsay, and pretending to state contents of judicial records and written papers and matters not within the knowledge of the witness. After the objection, witness says that he has made the answer in this way as the only way of expressing an answer to the question as put.)

Int. 19. At the time of the purchase of this property by you, what property, if any, if you know, had Joseph H. Racey, jr., at those stands, or used in connection with them, except what you purchased?

(The like objection.)

Ans. There was nothing else there.

292 Int. 20. Will you please describe the ice-box you purchased and state what you paid for it?

(The like objection.)

Ans. It was an ordinary square box, something like a refrigerator, something like two and a half feet high and about three feet wide. I cannot be positive as to its dimensions, but it was no larger than that. It was a rough box, and I bought it for fifty cents.

Int. 21. Did you see the interior of that box? If yea, state what was its internal arrangement and describe it.

(The same objection.)

Ans. I could not say.

Int. 22. How was it opened into?

(The like objection.)

Ans. The top lifted up, and I think there was a double cover, like a common refrigerator.

Int. 23. At the time of the purchase of this property was there any other ice-box at these stands or in connection therewith belonging to either of the Raceys you have named?

(Objected to as before.)

Ans. Not at that time. There had been another one previously, which had been worn out, I believe.

Int. 24. At what time was the previous one there, and where was it situated?

(The same objection.)

Ans. The previous one was there in 1861, and before and after. I cannot state how long, neither can I state where it was kept exactly. I think it was kept in the rear of the stand, or in the outhouse behind the stand.

Int. 25. Can you describe the last-named box? If yea, please do so.

(Same objection.)

Ans. I think it was a box very much like the one I have described already.

Int. 26. Do you know, and did you know, the pecuniary circumstances or condition as to property of Joseph H. Racey, jr., in 1860, 1861, 1862, 1863, to January 1, 1864?

293 (The same objection.)

Ans. I did, very well.

Int. 27. Please state what it was.

(The same objection.)

Ans. He was insolvent, having no property in his own name, and nothing could be collected from him by his creditors. [A receiver had been appointed for all his personal property.]

(The part of the answer in brackets objected to as stating the contents of legal documents and matters of record.)

Int. 28. During the time last inquired of do you know whether Joseph H. Racey, jr., had any creditors? If yea, to what extent?

(The same objection.)

Ans. I know he had a number. I could not state to what amount.

Int. 29. Had any of them brought a suit against him?

(Objected to as before.)

Ans. Yes.

Int. 30. Were there any executions for debt out against him for the same period?

(Objected to as before, and as calling for secondary evidence.)

Ans. I couldn't answer that.

Int. 31. Do you know of any efforts on the part of any of his creditors to find property belonging to him for attachment or levy? If yea, state what.

(Objected to as before.)

Ans. I know one creditor took most every proceeding allowed by New York law from 1861 to 1864 to collect a judgment. I think there were other suits, but my memory is not clear on that.

Int. 32. Do you know of any examination of Joseph H. Racey, jr., as to his property?

(The like objection.)

Ans. I know he was examined, but I was not present at the time, I think.

Int. 33. From the time of the commencement of your acquaintance with Joseph H. Racey, jr., until January 1, 1864, do you know the laws of the State of New York relating to exemptions of personal property from attachment on mesne process or levy on execution?

294 (The same objection.)

Ans. I do.

Int. 34. Will you state whether the ice-boxes you have described, or any similar articles of personal property, not being fixtures, were exempt from attachment or levy?

(Objected to as before.)

Ans. They were not.

Int. 35. During this period do you know whether Joseph H. Racey, jr., used or wore any diamond studs?

(Objected to on the ground stated, and also as being scandalous and impertinent, and also irrelevant to this issue.)

Ans. He wore a set when dressed up.

Int. 36. Who owned them, if you know?

(The same objection as to the preceding question.)

Ans. I believe Mrs. Amanda Parker.

Int. 37. What relation was she to Mr. Joseph H. Racey, jr.?
(The same objection.)
Ans. No relation that I know of.
Int. 38. What was her connection with him, if you know?
(The same objection.)
Ans. He lived with her.
Int. 39. Do you know and did you know the general reputation of Joseph H. Racey, jr., for truth and veracity?
(Objected to as before.)
Ans. Yes.
Int. 40. State what it was and is.
(Objected to as before.)
Ans. Bad.
Int. 41. Do you know parties that are acquainted with him?
Ans. I do.
Int. 42. Has he been a witness in causes where you have acted as counsel?
(Objected to as before.)
Ans. He was a witness on the supplementary prece'dings I have referred to.
Int. 43. Do you know his general reputation for truth and veracity?
295 (Objected to as having been once put and answered.)
Ans. Yes.
Int. 44. What is it?
(The same objection.)
Ans. Bad.
Int. 45. Do you know parties who are acquainted with W'm H. Racey?
(Objected to as before and as immaterial.)
Ans. I do.
Int. 46. Do you know his general reputation for truth and veracity?
Ans. I think I do.
Int. 47. What is it?
Ans. I should say it was bad.
Int. 48. Do you know the handwriting of W'm H. Racey?
(Objected to for the reasons heretofore stated.)
Ans. I do. I have seen him write frequently.
Int. 49. Do you know the handwriting of Joseph H. Racey, jr.?
(The same objection.)
Ans. I know that up to 1864 Joseph H. Racey, jr., could not write, except to sign his name. I have seen him sign his name, but don't know anything about his writing since 1864.
Int. 50. Do you know the handwriting of Joseph H. Racey, senior?
(The same objections as heretofore stated.)
Ans. I saw him write once, and only once.
Int. 51. Will you please examine papers marked "Vultee's Exhibits," and state if you know who executed them or signed them?
(Objected to as to form and substance, and for the reasons heretofore stated.)
Ans. Mortgage exhibit, with red ink, on the horse, cart, and harness, is signed by W'm H. Racey. My impression is that it was signed in my presence, but can't be positive. The deputation and receipt
296 endorsed on it is signed by me. The other mortgage is a copy made by me of an original on file. The deputation and receipt

endorsed on that are signed by me. The statement and sale annexed to those mortgages was made out by Mr. Vultee.

Int. 51. Will you examine the two papers in your hands, and state if you know by whom they were signed or executed, and annex copies of the same to your answer?

(Objected to as to form and substance, for the reasons previously stated.)

Ans. The mortgage of W'm H. Racey to George Moon, now handed to me, was executed by W'm H. Racey, I think in my presence. The signature is his. It is the original from which the mortgage I spoke of as being a copy in Vultee's exhibit is made. The other mortgage of Joseph H. Racey, senior, to myself was signed by Joseph H. Racey senior, in my presence, and the assignment to George Moon endorsed. It was executed by me. I produce certified copies of these two papers, and they are marked "Wingate exhibits, 1 and 2."

Int. 52. Who wrote the two mortgages, copies of which you have just produced?

(Objected to as before.)

Ans. I did.

Int. 53. Who wrote the original mortgage included in the Vultee exhibits?

(Objected to as before.)

Ans. I did.

(Counsel for the defendants objects to the introduction of the assignment on the ground that its execution has not been properly and legally proved, and to the mortgage of Joseph H. Racey, senior, on the same ground.)

Int. 54. Do you know the attesting witness to the assignment made by you to George Moon?

(Objected to as before.)

Ans. I do. He was formerly in my office.

Int. 55. Where is he now residing, if you know?

(Same objection.)

297 Ans. At St. Louis, Missouri.

Int. 56. In whose handwriting is the signature of the witness to that assignment?

(Same objection.)

Ans. It is in his handwriting.

Int. 57. Will you now state for what purposes the two mortgages of W'm H. Racey to George Moon, that you have referred to, were made?

(Same objection.)

Ans. They were made during the pendency of the suit I have referred to, to prevent the receiver of Joseph H. Racey, jr., or the creditors of the latter, from getting any of the articles mentioned in them in case the plaintiff should recover. It is proper that I should state that this mortgagee, Moon, knew nothing about that, as I understand.

(Answer objected to on the ground as tending to contradict the written papers, which showed the purpose for which the mortgages were given, and because it purports to give the motives actuating the person who made the mortgage.)

Int. 58. For what purpose was the mortgage of Joseph H. Racey, senior, and the assignment thereof to George Moon, referred to by you, made?

(The same objection as before.)

Ans. The purchase by me I have referred to was made at the request of George Moon. I took the mortgage from Joseph H. Racey, senior,

to secure the balance of the purchase-price on the sale by me to him, and assigned it to George Moon, as he was the person really interested.

Int. 59. For which of these parties were you acting as counsel, at or about the time of the execution of the mortgages you have referred to?

(Objected to as before.)

Ans. I drew the mortgages made by W'm H. Racey as his counsel. I acted in the suit I have referred to as associate counsel, or rather
298 as assistant to Mr. Boesé, the attorney for W'm H. Racey. I will state that at this time I was a law student, and attended to this to oblige Mr. Boesé, who had not sufficient time to attend to this himself. In January, 1863, I was retained by Mr. Moon as his counsel to attend to the foreclosure of these mortgages, and have been his counsel ever since.

(It appearing by the above answer for the first time that most of the testimony given by this witness relates to matters which he obtained knowledge of while acting as counsel, the counsel for respondents objects to all his answers on such matters for the reason that their statement is a violation of his professional duty and obligation.)

Int. 60. At the time of the execution of the two mortgages of William H. Racey to George Moon referred to by you, was there any other personal property belonging to William H. Racey, except stock in trade, other than that mentioned in the two mortgages, situated at the two stands you have referred to, or used in connection with those stands or business connected therewith?

(Objected to for all the reasons heretofore stated.)

Ans. No. There was a black marble slab on the fish-locker, but this I am positive belonged to J. H. Racey, senior. Everything else was covered by the mortgages. I desire to make a remark here that the mortgage covers a safe which I did not purchase, and which was removed some time before the sale.

Int. 61. At the date of those mortgages, had Joseph H. Racey, jr., any personal property situated at those stands, or used in connection with them or the business carried on at the same?

(Objected to as before.)

Ans. No.

Int. 62. From the date of the two first mortgages named to the date of the mortgage of Joseph H. Racey, senior, what personal property, if any, had Joseph H. Racey, jr., situated at those stands, or used in connection therewith, except stock in trade, if any?

Ans. None.

Int. 63. State what opportunities you had of knowing.

(Objected to as before.)

Ans. During the three years that this suit lasted, I was obliged to
299 go very often to the stand to see customers, etc., and besides this several questions arose in the case in regard to what were fixtures and what were exempt from execution, and also in regard to the arrangement of the stands on the space covered by them in connection with the corporation ordinances about markets, together with questions in regard to the value of the articles that were there. For which reason I was obliged to make a very careful examination of the stands and the articles there, and the manner in which they were fastened to the building, and also prepared one or more diagrams showing their condition, for the use of the referee, and for the purpose of examining witnesses by.

Int. 64. During this period last inquired of, was their preserving-apparatus, or freezer for freezing fish, at these stands, or used in connection with them by William H. Racey, or Joseph H. Racey, jr.?

(Objected to for reasons above stated.

Question withdrawn.)

Int. 65. Have you, at any time, seen or examined a preserving-apparatus, or freezer for freezing fish, belonging to Middleton, Carman & Co., fish-dealers, in Fulton Market? If yea, state when and where it was situated.

(Objected to for all reasons before stated.)

Ans. I have. I examined it on the eighth instant. It was situated on the ground floor in their place on Beekman street, opposite Fulton Market; No. 134 Beekman street, I think.

Int. 65. Now answer the 64th interrogatory, adding the words, similar to the one you saw in Beekman street.

(Objected to on the grounds heretofore stated.)

Ans. I never saw or heard of anything of the kind, and am positive there was none there but the boxes I have mentioned.

Adjourned to April 15, at 10 a. m.

(At the request of counsel for complainant, having asked the complainant's counsel to fix a day and hour when he will go on with the examination, and he having declined so to do, counsel for complainant asks adjournment to that time.)

300 (Counsel for the respondents gives notice that his engagements are such that he cannot resume the examination on the 15th, and cannot fix the time when he can go on until Monday next, at which time he is ready to fix the time, and protests against going on with the examination at any time not agreed upon between counsel.)

THURSDAY, *April* 15, 1869.

Adjourned, by stipulation between the counsel for the respective parties, to the 27th inst., at 10 a. m.

TUESDAY, *April* 27, 1869.

Present, counsel for the respective parties.

Adjourned to April 30, 1869, at 10 a. m.

APRIL 30, 1869.

Counsel for respective parties present.

Examination of G. W. WINGATE resumed:

Int. 66. At the time you visited Centre Market, and the stalls Nos. 15 and 17, as you have stated in a previous answer, state whether or not you saw Mr. Joseph H. Racey, jr., there at any of these times; and if yea, how many?

(Objected to.)

Ans. Yes. I saw him there almost every time I was there.

Int. 67. State whether or not, at any of those times, you made any examination of, or took any list of, the personal property at those stalls, or connected therewith, when he was present.

(Objected to as to form, and as immaterial, and also because the attention of the witness, J. H. Racey, jr., was not called to any such interview or transaction.)

Ans. I did. [I believe I have stated before the examination I made in regard to the stalls and what was there, and at those times Mr. Joseph H. Racey, jr., was present, and pointed out to me

301 the different articles, and explained what they were; and at these times I took memoranda in relation to them.]

(That part of the answer in brackets objected to by the respondents as not responsive; also for the reason stated in the objection to the question.)

Int. 68. When you made the examination and list you have referred to, what, if anything, did Joseph H. Racey, jr., do in regard to them at the time or times in your presence?

(Same objection as to interrogatory 67.)

Ans. Well, he pointed them out to me, and showed me how they were connected with the building some of them; explained to me what they were used for, and told me what they were worth.

Int. 69. For what purpose were the examination and list made that you speak of?

(Same objection as to interrogatory 67.)

Ans. For the purpose generally of being used in regard to matters arising in the suit I have referred to. I believe one examination and schedule which I prepared at that time was made for the purpose of drawing the chattel mortgages which have been introduced in evidence in this case.

Int. 70. Had Joseph H. Racey, jr., anything to do with the making of the two mortgages first made by William H. Racey to George Moore, already referred to in your testimony? If yea, state what.

(Same objection.)

Ans. All that I know of my own knowledge is, that he assisted me somewhat in getting them up. I knew nothing of my own knowledge of the transactions with the mortgagee at that time.

Int. 71. Do you know, and did you know, during the period of your acquaintance with J. H. Racey, jr., prior to the year 1864, the laws of the State of New York with reference to the collection of debts during the same period?

(Objected to generally.)

Ans. As far as concerns the questions of practice, I did. I understand the question possibly to include the entire law of the State of New York in regard to any matters that might be the subject of
302 litigation, which, of course, I cannot swear I understood. The ordinary practice of our courts I was familiar with.

Int. 72. Were you acquainted with the remedy, if any, furnished by those laws to a creditor against his debtor, after a return unsatisfied of his execution against the debtor, by the officer serving it to the court issuing it? If yea, please state what it was.

(Same objection.)

Ans. I was. There is a remedy which is briefly as follows: Where judgment is recovered, exceeding twenty-five dollars, on which an execution has been issued, and returned unsatisfied, the creditor can apply to a judge of the court in which the judgment was recovered, or to the judge of a court of common pleas where the judgment was recovered in a district court, and procure an order for the personal examination of the debtor in regard to his property, upon what are known as proceedings supplementary to the execution. The debtor is required to appear on the return-day of this order, and submit to an examination, and witnesses may be called by both parties. If any property is discovered, the court may order it to be delivered to the creditor. If the claim is doubtful, or the debtor's interests are not admitted, the court will appoint a receiver of all the property of the debtor, who, by virtue of his appointment, becomes immediately vested by operation of law with all the property belonging to the debtor at that time, which property he can take by indemnifying the sheriff, or by bringing a suit

for its recovery. This is the practice as near as I can state it, without going into it at great length.

Int. 73. Do you know whether or not, prior to the year 1864, and during your acquaintance with Joseph H. Racey, jr., any proceedings of the kind described in your last answer were instituted by any one against him? And if yea, state the time as near as you can, and by whom they were instituted.

(Objected to as immaterial, irrelevant, and involving matters for the introduction of which no foundation has been properly laid, and also as calling for the contents of judicial records which are themselves the best evidence.

Ans. Such proceedings as I have mentioned were instituted
303 against Joseph H. Racey, jr. They were commenced by Aaron Hardman, on the 7th of October, 1859. I produce the original affidavit and order for his examination. These proceedings continued until January, 1860, and upon them James Malcolm was appointed receiver of the property of Joseph H. Racey, jr., on the 26th of January, 1860. I produce a certified copy of the order appointing him.

(The papers referred to in this answer are produced and marked No. 1, Exhibit, April 30, 1869, R. E. S., and No. 2, Exhibit, April 30, 1869, R. E. S.)

(The introduction of the exhibits objected to as immaterial, irrelevant, and because they do not appear to be the papers described in the answer.

Int. 74. Was Joseph H. Racey, jr., examined in the course of those proceedings?

(Objected to for the reason stated in the objection to question 73.)

Ans. Yes.

Int. 75. Prior to 1864, were any suits brought, founded upon the supplementary proceedings against Joseph H. Racey, jr., just referred to by you? If yea, give their names, and the time, if you know, when they terminated.

(Objected to for the reason stated in the objection to interrogatory 73.)

Ans. There were. A suit was commenced by the receiver against William H. Racey, on the 22d February, 1860, for the purpose of recovering the property at the market, purchased at the market by William H. Racey, from his brother, Joseph H. Racey, jr. Another suit was commenced by the receiver against George Moon, on the 26th February, 1863, to recover the property covered by the chattel-mortgages which I have previously referred to as having been made to Moon by William H. Racey. The first suit was terminated on the 19th of January, 1863, by judgment in favor of the plaintiff. The second suit was terminated January, 1864, about the 16th, by a recovery by the defendant
304 of his costs and their payment by the plaintiff. No formal judgment was entered, as the plaintiff paid up the costs before the time fixed for entering it.

(So much of the answer as relates to the conclusion of the suits and the judgments entered thereon objected to, as giving the contents of judicial records.)

Int. 76. Who was counsel for the creditor in those proceedings and suits?

(Objected to as immaterial.)

Ans. Mr. Daniel S. Riddle. He was assisted in the second suit by Mr. Northrop, as counsel.

Int. 77. Were you counsel in the two last-named suits for any one? If yea, for whom?

(Objected to.)

Ans. In the first suit I acted for Mr. Boesé, the attorney for William H. Racey, as I have stated in one of my previous answers. In the second suit I was the attorney and counsel for the defendant.

Cross-examined:

(Cross-interrogatories by respondents, without waiving any of the objections to the examination, and all interrogatories on subjects objected to, de bene esse.)

Cross-int. 78. With whom did you study law?

Ans. I was in the office of Barstow & Woodman for something less than a year—say six months. I then was in Mr. Daniel Lord's office for four years, and I was then with Edgar S. Van Winkle, some six or nine months. I then studied with Abraham R. Lawrence, jr., and was with him about seven years, until I took offices for myself.

Cross-int. 79. You were clerk for Barstow & Woodman and Daniel Lord?

Ans. Yes.

Cross-int. 80. How old were you when you went to Barstow & Woodman's?

Ans. I think I was between thirteen and fourteen. I can't say exactly.

305 Cross-int. 81. You were office-boy with them?

Ans. I was office-boy.

Cross-int. 82. Did you take offices before you were admitted to practice?

Ans. No; I was with Mr. Lawrence when I was admitted to practice.

Cross-int. 83. Acting as clerk, and receiving salary?

Ans. I was a clerk receiving a salary, with the privilege of practising and using his library.

Cross-int. 84. And you did practise while with him?

Ans. Oh, yes; I stayed there until my business got so large that I required separate offices of my own.

Cross-int. 85. How long after you were admitted did you stay with him?

Ans. Somewhere about four years.

Cross-int. 86. Where and how did you practise before you were admitted—in what courts?

Ans. I used to try all Mr. Lawrence's smaller cases for him, in any and all courts—generally, however, they were in the marine and district courts. I had a few little suits in those courts myself from time to time. I had one or two suits in courts of record, one I think I carried on in the name of a friend of mine who was admitted to the bar. I can't state more specifically now without looking at my register.

Cross-int. 87. What year were you admitted to practice, and in what court?

Ans. In 1861, in the supreme court in this State. I do not recollect when I was admitted to the United States court.

(Adjourned to May 1, 1869, at 10 o'clock.)

SATURDAY, *May* 1, 1869.

Present, counsel for the respective parties.

Cross-int. 88. Have you had any business with J. H. Racey, jr., since 1864?

306 Ans. Nothing, except perhaps calling on him once or twice in regard to another mortgage held by a client of mine.

Cross-int. 89. What client?

Ans. George Moon.

Cross-int. 90. When last did you call on Racey in regard to that mortgage?

Ans. I could not say; probably from three to four years ago.

Cross-int. 91. How often have you seen or talked with them since 1864?

Ans. Eight or ten times.

Cross-int. 92. Upon business, or mere casual meetings and conversations?

Ans. I don't think I have spoken to him on business but twice since 1864.

Cross-int. 93. Was that business his, or some other party's?

Ans. Another party's.

Cross-int. 94. Have you had any business with him since the early part of 1866?

Ans. I don't recollect having any business with him at all, except about those mortgages, which was in 1864 or 1866.

Cross-int. 95. Have you had or been engaged in any matters against him since 1864?

Ans. No; except those mortgages.

Cross-int. 96. Did you have any business for or against him, Joseph H. Racey, jr., in regard to those mortgages?

Ans. When I said those mortgages, in answer to the last question, I should have said that mortgage, as there was but one. I called upon him to endeavor to get him to pay it, at the request of Mr. Moon.

Cross-int. 97. Was he the mortgagor?

Ans. I think not.

Cross-int. 98. Did he pay the mortgage?

Ans. My client told me he did. I don't know it of my own knowledge.

Cross-int. 99. Do you know your client's signature? I mean the signature of George Moon.

307 Ans. Moon can't write. He always has some one to sign for him. He sometimes makes a cross, and sometimes he holds a pen while some other party writes his names.

Cross-int. 100. Since 1864, how many times have you visited Centre Market, and stands 15 and 17 in that market?

Ans. I have been up to Centre Market several times, as I have had business with parties connected with the market. Not the Racey's. My impression is that I have not been at the stands themselves more than two or three times.

Cross-int. 101. What parties in the market have you done business for since 1864?

Ans. I had some business with a man named John Connolly.

Cross-int. 102. You defended a suit for him, didn't you?

Ans. My impression is that this was some business that came to me through Mr. Lawrence. What the proceedings were originally for, I cannot now distinctly recollect. Something about his furniture, I think. In the course of the matter Connolly's mind became affected, and so nothing was done in regard to that.

Cross-int. 103. As I understand it, you have not answered the question. Will you now answer?

Ans. I don't think I did, unless there was a suit arising out of those

transactions which I have no recollection of at present; still it is possible there may have been one.

Cross-int. 104. Do you remember any suit in which Connolly was defendant, brought subsequently to 1860?

Ans. I don't know of any other proceedings than those I have referred to.

Cross-int. 105. Did you act for J. H. Racey, jr., as counsel or assistant, in any proceeding against him, subsequent to 1860?

Ans. I did not, except perhaps in inducing Mr. Moon to foreclose his mortgage in January, 1863, which I believe was done at J. H. Racey's personal request.

Cross-int. 106. Was that request made to you?

Ans. It was.

Cross-int. 107. Where?

Ans. In Mr. Lawrence's offices. I was with him at the time.

308 Cross-int. 108. When?

Ans. On the 15th or 16th of January, 1863.

Cross-int. 109. Do you state that as a matter of memory?

Ans. I have a memorandum of my calling on Moon on the 16th of January, and I think it must have been that day, or the day before, that Racey spoke to me.

Cross-int. 110. I don't understand that you have answered the question. Will you please answer?

Ans. I can't answer it any more definitely.

Cross-int. 111. Don't you know the difference between a recollection of a fact and the conclusion reached by a process of reasoning in regard to it?

Ans. Yes, I do; but it is rather a fine distinction between a memorandum of the date of a portion of a transaction and a memorandum of a date of a whole transaction. I think I have in my office a memorandum of Racey calling on me, but won't be positive. I have here a memorandum of my calling on Moon, which was done immediately after Racey calling on me.

Cross-int. 112. Is the distinction between a simple matter of memory and a conclusion reached by memoranda so fine that your mind is incapable of making it?

Ans. My mind is perfectly capable of making it, but the distinction is so fine that I didn't suppose we were wasting time by go' into such distinction when the original question was put; so I answered it by stating the facts.

Cross-int. 113. You were asked if you remembered facts which you have not yet answered. If you are capable of answering the question will you do so now?

Ans. I think my previous answer explains my position. I have a memoranda here by which I know I did a certain thing on the 16th of January. I recollect that Racey called on me immediately previous to my doing that thing. Without the memoranda I could not fix the date.

Cross-int. 114. Independent of that memorandum, do you remember that you did the thing which you have referred to?

Ans. I do, very distinctly.

309 Cross-int. 115. Did you get paid for doing it?

Ans. My impression is I did not for that.

Cross-int. 116. Don't you recollect?

Ans. I simply recollect that I was paid for my services in regard to the foreclosure of the mortgage, but I think for nothing but that.

Cross-int. 117. Did you make demand on the mortgagor before foreclosing that mortgage?

Ans. I did not myself.

Cross-int. 118. Did you see him in regard to it?

Ans. I don't think I did. I think he was out of town.

Cross-int. 117. To what paper did you refer when you made the last answer?

Ans. In consequence of my having purchased this property in my own name to oblige Mr. Moon, the circumstances being somewhat peculiar, I immediately wrote out a full statement of the whole transaction, covering seven pages of foolscap, which is the paper I referred to.

Cross-int. 118. Does it appear by that paper that J. H. Racey, jr., called on you on the 15th or 16th January, 1863?

Ans. It does not. The memorandum is only one of the circumstances connected with the foreclosure of the mortgage and the sale of the property. [I desire to say here, the reason why I made the memorandum was that Mr. Moon had never been a client of mine before, and I wanted there should be no question in regard to my authority to act as I did.] I intended to include this in my answer to the previous question.

(All the answer in brackets objected to by defendant's counsel.)

Cross-int. 119. During the year 1864 how many times did you visit stands 15 and 17 in Centre Market? Please answer this from your memory.

Ans. I can't say. After the trial of Malcolm v. Moon, which took place in the first part of January, 1864, as near as I can recollect without referring to my memorandum, I didn't go there more than two or three times, as I have already stated. Immediately prior to that trial I went up there several times to see about witnesses. I think that most of these visits were made in the end of 1863, but am not positive. In my previous answers in regard to the number of times I have been there since 1864, I referred to since the trial of that suit, which was about the first part of January, 1864.

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Cross-int. 120. Who did you see at any of your visits as above stated, and who did you summon or use as witnesses on that trial?

Ans. I saw Joseph H. Racey, jr., and a number of other parties who worked in the market and who were acquainted with the stands. Some of these I subpœnaed. I can't say exactly who they were without referring to papers I haven't got with me.

Cross-int. 121. Don't you recollect anybody besides Joseph H. Racey, jr.?

Ans. I consulted with John Downey and some others. I can't recollect their names.

Cross-int. 122. Who is John Downey?

Ans. He kept a fish-stand in Centre Market.

Cross-int. 123. What number?

Ans. I don't know.

Cross-int. 124. Was he a witness at the trial? Answer from memory.

Ans. I can't tell without looking at my papers.

Cross-int. 125. Were you counsel for the defendant?

Ans. I was.

Cross-int. 126. Were you also a witness for the plaintiff?

Ans. I testified in regard to the evidence given by witnesses in the case of Racey v. Racey, which I had taken down; but I can't say whether the plaintiff called me or not. My impression is that my

testimony was given by mutual arrangement between counsel, for the benefit of both parties.

Cross-int. 127. Did you testify at that time that the mortgage under which your client claimed to hold the property was given in fraud of creditors?

Ans. I didn't testify anything about the mortgage. [In point of fact, as far as my client was concerned, it was not.]

(Objected to part of answer within brackets as purely voluntary, and not responsive to the question.)

311 Cross-int. 128. During any one of your visits to Centre Market in 1864, did you make any list or schedules of property at stands 15 and 17? If so, at which visit?

Ans. I did not.

Cross-int. 129. How many times did you visit those stands in 1863? Answer from memory.

Ans. Somewhere about eight or ten times to my best recollection.

Cross-int. 130. Give the times.

Ans. I went up there two or three times in January, 1863, in regard to the foreclosure, and I went up there again in the fall and winter, perhaps five or six times, I should think, in relation to the suit against Mr. Moon.

Cross-int. 131. At any one of the times that you went, in 1863, did you make any list or schedule of the property?

Ans. In January, 1863, I did. I did not at any other time during that year.

Cross-int. 132. During the year 1862 how many times did you visit those stands?

Ans. In the first half of 1862 I was there a great many times. I can't specify the number. I was there occasionally after September of that year.

Cross-int. 133. Was you there as attorney for anybody during that year?

Ans. I was acting as assistant for Mr. Boesé, as I have before testified.

Cross-int. 134. Did you make any lists or schedules of the property in the stands that year; and if so, when?

Ans. I did during the first part of the year, I think. I can't specify exactly the time. I made a number of lists, diagrams, and one thing or another relating to the property on the stands in 1861, or the fore part of 1862; but I can't designate the time when I made them more specifically.

Cross-int. 135. Were the articles of personal property so numerous, or were they so frequently changed, as to require those repeated lists or schedules?

Ans. Neither.

312 Cross-int. 136. When you say, in answer to interrogatory 10, that W'm H. Racey claimed to own everything connected with those stands, were you repeating what W'm H. Racey said to you in substance?

Ans. Not to me particularly. He defended the suit on that ground, and testified to that effect before the referees.

Cross-int. 137. When did he so testify? What year? I ask you to answer from memory.

Ans. I have a memorandum of this examination by which I can tell the date, but I cannot recollect it from memory, except that I know that it was before June, 1862, and I know that it was pretty chilly weather.

He also testified to the same effect in his answer, and various papers he swore to during 1861. I fix the date as being before June, 1862, because I went away with my regiment at that time, and was gone some time.

Cross-int. 138. Did he so state at any time during the year 1862, in your presence?

Ans. I think not. My impression is that he went away to the war at the end of 1861, and was gone a long time. In fact, I don't recollect of having much to do with him in regard to this case during 1862, although I may have done so. I can't tell positively without referring to memoranda.

Cross-int. 139. You know of your own knowledge, do you, to whom the permits for those stands were given?

Ans. The permits were introduced in evidence on the trial, and I recollect looking up some law in regard to the right of the receiver to interfere with them. I mean the receiver of Joseph H. Racey.

Cross-int. 140. If I understood you correctly, neither of those permits stood in the name of Joseph H. Racey, jr.?

Ans. My impression is that one stood in the name of W'm H. Racey, and one in the name of Joseph H. Racey, sen. By looking at memorandum I am positive that that is so.

Cross-int. 141. What right, then, had the receiver to either one of them?

Ans. The receiver claimed that these permits were only put in
313 the names of W'm H. Racey and Joseph H. Racey, sen., to cover Joseph H. Racey, jr., to whom they in reality belonged, and insisted that by virtue of his appointment they were vested in him, and sought a decree directing them to be given to him.

Cross-int. 142. Were you then acting as counsel for W'm H. Racey?

Ans. I was assisting Mr. Boesé in defending him, as I have stated before; I was too young to claim to be counsel.

Cross-int. 143. At whose request were you so acting?

Ans. At the request of Mr. Lawrence and Mr. Boesé.

Cross-int. 144. Did you receive any compensation for your services in the suit of Malcolm v. Racey?

Ans. I don't think I did, except some motion-costs that were paid me by the other side. Mr. Boesé made me a present once or twice during the suit, and had no reference to it, and was a present and not compensation. For all proceedings outside the suit I was paid.

Cross-int. 145. What do you mean by proceedings outside of the suit?

Ans. Drawing the mortgages, and the foreclosure proceedings. My impression is I drew some other papers once, but can't be positive.

Cross-int. 146. Did you make any charge to, or receive any pay from, W'm H. Racey for any services rendered by you as attorney for him in any case entitled Malcolm v. Racey?

Ans. I think I told William H. Racey several times that he ought to pay Mr. Boesé and myself something for our services in the suit of Malcolm v. Racey, or rather Racey v. Racey, as it was called; but I am quite positive he never did.

Cross-int. 147. Did you not tell William H. Racey, or cause him to be informed, that that suit had been dismissed?

Ans. I don't recollect telling him so, but the referee informed me that he had decided to dismiss the complaint, a decision which he subsequently reconsidered. It is possible I may have notified Racey when I got the referee's note that the complaint had been dismissed, though I have no recollection of it.

314 Cross-int. 148. When were you so informed by the referee? What year?

Ans. During 1861.

Cross-int. 149. Was there any supplementary proceedings in the case last referred to?

Ans. There were; plaintiff's attorney quite recently (within one or two years) commenced supplementary proceedings against W'm H. Racey, who retained me to defend him, and I procured the proceedings to be dismissed. This, however, had no connection with the suit.

Cross-int. 150. Give the year when those proceedings were dismissed.

Ans. I could not tell without referring to my register. It was while Judge Cardoza was a judge of common pleas; I should think it was about 1866; I can't tell, however, without referring to my register.

Cross-int. 151. Since the year 1864, what persons have you heard speak of the reputation of Joseph H. Racey, jr., for truth and veracity?

Ans. I have heard Mr. Boesé, and I think Mr. Lawrence, and I think Mr. Connolly, Mr. Riddle, and some others that I can't recollect.

Cross-int. 152. When last did you hear Mr. Boesé speak of it?

Ans. About five hours ago.

Cross-int. 153. When before that?

Ans. When I was up to his house, I think about two weeks ago.

Cross-int. 154. When before that?

Ans. I couldn't say any particular time, except we very frequently talked about the case and about Racey.

Cross-int. 155. When did you last hear Mr. A. R. Lawrence, jr., speak of it?

Ans. I could not say; not for some time, I think; I think he has spoken to me about Racey, casually, once or twice when I have called in to see him since 1864, but am not positive.

Cross-int. 156. Mr. Connolly is the man whose mind was affected?

Ans. Yes.

315 Cross-int. 157. Did he have a lawsuit with Joseph H. Racey, jr., at any time?

Ans. I don't know anything about it of my own knowledge.

Cross-int. 158. Mr. Riddle was the plaintiff's attorney in cases against Mr. Racey to which you have referred?

Ans. He was.

Cross-int. 159. Have you and Mr. Riddle been in consultation in regard to this present pending case at any time?

Ans. I met Mr. Riddle here on the day I was first examined, I believe, and told him I was being examined about Racey. That is the only consultation I have had.

Cross-int. 160. Who first spoke to you about being a witness in this case?

Ans. Mr. Cutter.

Cross-int. 161. When?

Ans. Some two or three days before my first examination.

Cross-int. 162. Had you known him before?

Ans. I had not.

Cross-int. 163. Who introduced him to you?

Ans. He introduced himself at first. Subsequently Mr. Grey spoke of him to me.

Cross-int. 164. Have you received any compensation for attending as a witness or otherwise in this case?

Ans. I have not. I expect, however, to be paid as an expert for my time and trouble hunting up these old papers and examining them.

Cross-int. 165. Upon what is the expectation based?

Ans. When Mr. Cutter called on me I told him that these papers were extremely voluminous, and it would take a great deal of my time and give me a good deal of trouble to examine them to be prepared to testify, and declined to do so unless I should be compensated, and he agreed that I should be.

Cross-int. 166. Did you determine on any amount?

Ans. Nothing was said about the amount except that I said I could not give my time for nothing as I was very busy.

Cross-int. 167. At what rate do you expect to be paid?

316 Ans. That will depend entirely upon the time I have spent. I expect Mr. Cutter, as a brother lawyer, to see that I get an adequate compensation, and I trust to him entirely in the matter.

Cross-int. 168. What should you consider an adequate compensation up to the present time?

Ans. I could not say until I see how much time I have spent, and have figured a little. I didn't propose to make any specific charge, but simply to say I have spent so much time, and let him pay what he thought was right.

Cross-int. 169. What is your ordinary charge for professional services per day?

Ans. It varies entirely with the nature of the case, whether I am in my office or out of it. It varies from $15 to $50. I have been paid anywhere under $50 per day.

(Adjourned to May 3, 10 a. m.)

MONDAY, *May* 3, 1869.

Present, counsel as before.

Cross-int. 170. Do you remember that Mr. Lawrence was counsel for either party in an action between Racey and Connolly while you were in his office?

Ans. I have an impression that Mr. Lawrence was concerned in something of the kind, but am not positive.

Cross-int. 171. Did you have anything to do with it?

Ans. If Mr. Lawrence was counsel I certainly did, as I attended to all the minor details of his business.

Cross-int. 172. Do you remember anything about it?

Ans. I have no present recollection about it?

Cross-int. 173. Is the body of the paper now shown you in your handwriting?

Ans. No, sir.

Cross-int. 174. Are you positive about that?

Ans. Yes, sir.

Cross-int. 175. Do you know who wrote it?

Ans. I do not, although I recollect something about having seen the letter before.

317 Cross-int. 176. Do you know that any demands against Joseph H. Racey, jr., are now outstanding and unpaid?

Ans. I have known nothing about his affairs for several years past.

Cross-int. 177. Do you know anything about him during the same period?

Ans. Please explain what you mean by "knowing about him." What sense?

Cross-int. 178. If the witness is incapable of comprehending the question, or is unwilling to answer, I do not care to press it.

Ans. If this is to be considered as a question to me, and not as a remark to the commissioner, I will say that there is no unwillingness on my part to answer. I will do so as I understand its purport, although I should prefer to have it made more specific. I have known about Joseph H. Racey during the time inquired of, although not as much as during the litigation I have referred to.

Cross-int. 179. What occasion have you had since 1865 to know anything about Joseph H. Racey, jr. ?

Ans. I have had no business that I recollect of since 1865 in which he was any way concerned. I have talked, however, about him from time to time with those who knew him.

Cross-int. 180. Do you remember any one with whom you have talked other than those you have named ?

Ans. I cannot now name anybody but George Moon, a client of mine.

Cross-int. 181. At any time since 1864, has Mr. George Moon told you that Racey's character for truth and veracity was bad ?

Ans. My impression is he did up to 1866. I can't be positive that he didn't later.

Cross-int. 182. Why do you qualify the last answer by using the words " my impression ?"

Ans. Since 1864 I have been doing more or less business for Mr. Moon, and we have spoken of the Racey case and of Racey a great number of times. Latterly, however, the matter has somewhat died out, and Mr. Moon has not spoken about his character so much, or expressed
318 any feeling against him. I cannot, therefore, be positive when was the last time I heard Mr. Moon speak unfavorably of him.

Cross-int. 183. Will you swear, as a matter of fact, that you ever heard George Moon say that the character of Joseph H. Racey, jr., for truth and veracity was bad ?

Ans. I will. I have heard him say so a great many times.

Cross-int. 184. When last, as nearly as you can remember, did he so say ?

Ans. I could not say the last time when he spoke of his character as being then bad. Quite recently he spoke to me of his character having been bad, but said he had got money, and thought he had improved, as he had paid his debts. This was within a month past, I think.

Cross-int. 185. You speak of his character. Was it his character for truth and veracity, not his general moral character, that was discussed ?

Ans. I think it was his character for truthfulness that was alluded to mainly.

Cross-int. 186. Growing out of his financial difficulties, his promising to pay and not doing so ?

Ans. I understand it referred to his general conduct, and his want of reliability.

Cross-int. 187. You are positive you are not mistaken as to this having been said by Mr. Moon, are you ?

Ans. I am quite positive. Mr. Moon never expressed himself as severely as others, but he expressed himself decidedly.

Cross-int. 188. During or at the interview you had with Mr. Boesé, on Saturday last, did he speak of Mr. Racey's character for truth and veracity ?

Ans. He did.

Cross-int. 189. You are not mistaken as to the time when you saw him, are you ?

Ans. I think not. I gave the time within half an hour. He called in

casually in my office between eleven and twelve, near twelve o'clock. We spoke about the matter.

Cross-int. 190. You say you know William H. Racey, and that
319 his character for truth and veracity is bad. Since the commencement of the year 1863, who have you heard speak of him?

Ans. The referee, Mr. Livingston Livingston, before whom the case of Racey v. Racey was tried. The parties I have named previously, in regard to his brother, except Conway and Moon. I can't recall any other names of parties who have spoken of him since 1863.

Cross-int. 191. By parties before named, you mean Mr. Thomas Boesé, Mr. E. A. R. Lawrence, jr., and Mr. Riddle, do you?

Ans. I mean Mr. Riddle, Mr. Boesé. I am not very positive whether Mr. Lawrence spoke to me about him or not. I refer, however, to other parties whose names I cannot recall, but which I have mentioned previously as not remembering.

Cross-int. 192. When last did you hear Mr. Boesé say that W. H. Racey's general reputation for truth and veracity was bad?

Ans. The last time, or the time before, I was up at his house, I think.

Cross-int. 193. When was that?

Ans. Well, some three to five weeks ago. I am sure it is not more than that.

Cross-int. 194. Mr. Riddle was counsel against William H. Racey, wasn't he?

Ans. He was.

Cross-int. 195. Did you ever know, or were you ever informed, that there had been a personal quarrel between Mr. William H. Racey and Mr. Riddle, and that there had been an application of physical force by the former to the latter?

Ans. I heard of Mr. Racey having threatened to do something of the kind. I know they had words during litigation, but I do not recollect hearing that any force had been actually used.

Cross-int. 196. Did not the same state of facts exist between Joseph H. Racey, jr., and Mr. Riddle?

Ans. I never heard anything of the kind myself, but I am very sure there was.

320 Cross-int. 197. Didn't you know, or were you not informed, that the Mr. Conley to whom you have referred was sued by Mr. Joseph H. Racey, jr., for slander?

Ans. I think he was. I think a suit of that character was commenced when I was in Mr. Lawrence's office; at least, the word "slander" brings back to me, recalls to me, some proceedings of that kind.

Cross-int. 198. Did not Mr. Lawrence act as counsel for Mr. Conley in that suit?

Ans. If my recollection of the suit is correct, he did.

Cross-int. 199. During the pendency of that suit did Mr. Conley go to California, leaving his business?

Ans. He went to California, as he informed me afterwards. I could not say, however, whether it was during the pendency of this suit or not. My impression is that the suit was compromised shortly after it was commenced, but my recollection of it is quite vague.

Cross-int. 200. When you purchased the property at the mortgagee's sale, as stated in your answer to the 11th interrogatory, to whom did you pay the purchase-money?

Ans. I gave a check to the auctioneer, I think.

Cross-int. 201. Did you pretend to purchase, or claim under your pur-

chase, any property other than that mentioned and described in the mortgages?

Ans. I did not. I did not even buy all that was mentioned in the mortgages. I only took what was there of it.

Cross-int. 202. Your connection with the Raceys began in 1860, didn't it?

Ans. Either in the commencement of 1860 or in the end of 1859?

Cross-int. 203. Did you of your own knowledge know what property was possessed by the Raceys, at the time you purchased under the mortgages, at places other than those stands?

Ans. I knew they had a horse and cart at a stable. All I knew about anything else is that I understood they had no other property. Of course they might have owned property at the time of the sale that I knew nothing about.

Cross-int. 204. Did it ever occur to you that there is any dis-
321 tinction between what you know of your own knowledge and that which somebody has told you?

Ans. Yes.

Cross-int. 205. Why did you not answer, then, the question which was put to you next preceding the last one as it was put?

Ans. I consider it impossible to state what property a third party owns of my personal knowledge. I understand that it is generally sufficient to enable a party to speak as to the ownership of property that certain other parties have, or have not, claimed to own it. In this case it was very doubtful who owned the property, the Raceys, the receiver, or the mortgagee, and as the inquiry was as to Racey's property, I could only speak as I had been informed. By Raceys, I mean Joseph H. Racey, jr., and William H. Racey.

Cross-int. 206. Did you ever get so far in your professional studies as to learn that hearsay testimony was inadmissible in evidence?

Ans. Every lawyer knows the general rule; but when a question is asked which, like this, can only be answered by giving hearsay testimony, I understand it to be competent for what it is worth.

Cross-int. 207. Then, if I understand your last answer, when you are asked if you know a thing of your own personal knowledge, you feel at liberty to state what somebody has told you?

Ans. You don't understand my last answer, then. I think the matter is very plain, and the distinction quite easy to draw. I only know the reputation of the Raceys from what has been told me, and I only know their ownership of the property in question from what they and others have told me.

Cross-int. 208. Whenever you have testified, then, during this examination, as to what property the Raceys did or did not have, you have simply given the substance of what somebody else has told you?

Ans. I have given the ownership from what was told me by them and others, and by what was testified to in the litigation, and, as far as the property on these stands was concerned, by the fact of their being in possession there.

322 Cross-int. 209. Why did you not answer the last question directly, yes or no?

Ans. Because I preferred to state my position more precisely than that answer would have done.

Cross-int. 210. You say you know that Joseph H. Racey, jr., was examined in answer to interrogatory 32, but that you were never present. How came you to say you knew he was examined?

Ans. Because I know it. Questions in regard to his examination

formed a very material part of the case of Racey against Racey, and I had to fully inform myself all about it. I stated, however, I was not present, to avoid any misconception.

Cross-int. 211. Won't you tell me, as a lawyer, how you knew that Mr. Racey was examined, so as to be able to swear to it as fact within your knowledge?

Ans. I have given the reason which enables me to swear, as a matter of fact, that Mr. Racey was examined. I have not sworn that I knew it of my personal knowledge, but, on the contrary, I have expressly stated that I was not present at the time.

Cross-int. 212. What distinction do you make, as a witness, between things which you know of your own personal knowledge and things which you swear you simply know?

Ans. There is a very broad distinction, familiar to everybody.

Cross-int. 213. The distinction is too broad for me to comprehend. Will you enlighten me?

Ans. I know General Grant is President of the United States, but I do not know it of my personal knowledge. I think that shows the distinction I refer to.

Cross-int. 214. So, when you say you knew J. H. Racey, jr., was examined, you wish to be understood, do you, that you knew it in the same way you know who is President of the United States?

Ans. The principle is the same, with the addition that I have conversed with Racey, and other persons who were present at the examination, about it, and had possession of the papers and testimony, and examined witnesses about what took place at the time.

Cross-int. 215. When you answered the 18th interrogatory, and others of a kindred character, as well as when you made the last answer, did you know, as a lawyer, that the contents of written papers and judicial records could not be given in evidence by parole?

323

Ans. I am perfectly familiar with the rule, and testified to the facts, not to the contents of written papers. I did not pretend to give the contents of written papers. I did not consider, and do not now consider, that the rule applied to what I said.

Redirect:

Int. 216. Was the examination of J. H. Racey, jr., that has been referred to, in writing?

(Objected to for the reason stated in the examination-in-chief on this subject.)

Ans. It was taken down in writing and signed.

Int. 217. Have you seen that written examination and the signature to the same?

Ans. I think so.

Int. 218. By whom was it signed?

(Same objection.)

Ans. By him.

Int. 219. At the trial of the suits of Racey against Racey, and Malcolm against Moon, already referred to by you, did Joseph H. Racey, jr., testify?

Ans. He did not.

Int. 220. Will you state, if you know, why he was not called as a witness in those suits?

(Objected to as immaterial, and for the reason that it calls for private

and uncommunicative reasons of parties in a suit in no way connected with or material to the present issue, and also because it is leading.)

Ans. I know he was not called, because we were afraid to call him.

Int. 221. Will you state the grounds of the fear to call him, if you know?

(Objected to for the same reason stated before in objection to the last question, and because there is no rule of law known to me under which such an inquiry is admissible.)

324 Ans. The plaintiff's counsel, we ascertained, was prepared to impeach him. We thought it would hurt our cause if we called him.

(Answer objected to as being hearsay.)

Int. 222. You have been asked who you have heard speak of William H. Racey, and of his character for truth and veracity, and have given in your answer the name of Mr. Livingston Livingston as one of the parties whom you have heard so speak. Will you please state, if you remember, what Mr. Livingston said on that subject?

(Objected to for the reason that this party was called to testify to the general reputation of Wm. H. Racey for truth and veracity, and the inquiry is not open to the party calling him, and is not rendered admissible by anything in the cross-examination, not being in rebuttal.)

Ans. Mr. Livingston told me he decided the case against the defendant, inasmuch as he considered Mr. William H. Racey's testimony in it was wholly unworthy of belief. He inserted the same thing also in his written opinion of the case, which he gave me.

Int. 223. You have been asked who you have heard speak of the reputation for truth and veracity of Joseph H. Racey, jr., since 1864. Will you state whether or not you have heard persons speak of the same subject prior to and during 1864? If yea, state how many, as near as you can, and during what period of time.

(Objected to on the same ground stated to question 222.)

Ans. I have. From 1860 up to about 1863, during the pendency of the case of Racey against Racey, I spoke to a number on the subject. It is almost impossible for me to state the number; some six or eight, I suppose; perhaps more.

(On reading the testimony, preparatory to signing it, the witness desires to state: In regard to the 144th interrogatory, I understood it to refer to "the suit" of Malcolm against Racey, or Racey against Racey, as it was generally called, and did not include the supplementary proceedings subsequently commenced in 1865 or 1866, and which I have testified about. For my services in these proceedings I was fully paid by Mr. William H. Racey.)

GEO. W. WINGATE.

325 *Deposition of Daniel S. Riddle, taken, subscribed, and sworn to before R. E. Stilwell, examiner.*

APRIL 2, 1869.

DANIEL S. RIDDLE, being called, was sworn and examined as a witness on the part of the complainant.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Daniel S. Riddle; my age, forty years; I reside in New York city; my occupation, lawyer.

Int. 2. How long has that been your occupation, and where is your office?

Ans. Since May, 1857; office 128 Broadway, in this city.

Int. 3. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market, New York City? If yea, how long have you known him?

Ans. I do. I have known him since October, 1859.

Int. 4. Do you know William H. Racey, formerly fish-dealer in the same market? If yea, how long have you known him?

Ans. I do. I became acquainted with him also in October, 1859, a week or two after making the acquaintance of Joseph.

Int. 5. Do you know Joseph H. Racey, sen., of New York City? And if yea, how long have you known him?

Ans. I can hardly say that I know him. I think I have seen him.

Int. 6. Do you know George Moon, fish-dealer in New York City? And if yea, how long have you known him?

Ans. I do. I became acquainted with him in the winter of 1861; January or February, I think.

Int. 7. At that time, had he a partner in business? If yea, what was his name?

Ans. I think he had. I think his name was Lamphier, or some such name.

Int. 8. Since you became acquainted with Joseph H. Racey, jr.,
326 have you known fish-stands Nos. 15 and 17, Centre Market, and the personal property used at and in connection with those stands? If yea, state when you first knew about them, and how long you had any knowledge of them.

Ans. As to the stands I have. As to property, I have known some property there. I became acquainted with the stands in the fall of 1859. I continued to know about them until February, 1863.

Int. 9. Have you ever seen those stands and the property referred to in the preceding question? If yea, when first did you see them, and about how many times during the period you have referred to in the last answer?

Ans. I have seen those stands and property at and about the stands. The first time I saw those stands was in October, 1859, and I have seen them at least half a dozen times from October, 1859, to February, 1863

Int. 10. Will you state how you came to see and know about them at the times you have named, and what you had to do with them during the period of time stated in answer to question 8?

(Objected to as irrelevant and immaterial, and as calling for matters for the introduction of which no foundation has been laid.)

Ans. Well, in the latter part of September or the early part of October, 1859, a judgment was placed in my hands for collection against Joseph H. Racey; an execution had been returned unsatisfied, so I instituted supplementary proceedings to bring Joseph H. Racey, jr., up and examine him as to his property. The plaintiff in the judgment had shown me the stands and the property about the stands just before instituting proceedings. I served the order supplementary myself on Joseph H. Racey personally at the stands in Centre Market, and took a casual survey of the stands and property there. During the progress of those proceedings, which continued several months, and which resulted in a receivership, and the receiver then brought an action against William H. Racey, who claimed the property and the stands and everything there; and during the continuance of that action, which lasted till January, 1863, I went a number of times to these stands to ascertain the property that was there, and to assure myself what property there was, and took particular notice.

327 (That portion of the answer which gives the result of judicial proceedings, or the action of judicial officers, objected to specially.)

Int. 11. What was your purpose in going to those stands, as you have stated?

(Question objected to for the reason stated in objection to previous question, and also generally as inadmissible.)

Ans. To ascertain what property there was there and what kind.

Int. 12. Yon speak of a receiver being appointed in the course of those proceedings. Please state what you mean thereby.

(Same objection as to the two preceding questions.)

Ans. Under our State practice, after an execution has been returned unsatisfied, either wholly or partially, a judgment-creditor can apply to a judge of the court ex parte upon an affidavit, for an order requiring the judgment-debtor to appear before him or a referee at a time and place mentioned, and make discovery on oath concerning his property, with an injunction in the mean time preventing him from interfering with any of his property except such as may be exempt from execution. After such appearance and the debtor's examination upon oath, the judge upon motion will appoint a receiver. This receiver has all the powers, capacities, and responsibilities of a receiver in equity appointed by the court.

Int. 13. Was there a receiver appointed of the property of Joseph H. Racey, jr.? If yea, who was he, and when was he appointed?

(Objected to for all the reasons stated above, and further for the reason that if the fact be so, there is better evidence of it, and of all the matters inquired of.)

Ans. There was. His name was James Malcolm, appointed in January or February, but, I think, in January, 1860.

Int. 14. When a receiver is appointed in the way you have stated, in whom vests the title to the property of the judgment-debtor?

(Objected to for the several reasons stated in the objections to the preceding interrogatories.)

Ans. In the receiver.

Int. 16. Who was the judgment-creditor in the supplementary proceedings against Joseph H. Racey, jr.?

(Same objection.)

328 Ans. Aaron Hardman.

Int. 17. Who was counsel for the creditor during the proceedings and the suit brought by the receiver?

(Same objection.)

Ans. I was.

Int. 18. Who was counsel for William H. Racey during the suit?

(Same objection.)

Ans. Thomas Boesé was the attorney and counsellor of record. George W. Wingate was associated with him, and took a very active part in the litigation. Abraham Lawrence, jr., was also counsel in the case, and appeared several times before the referee.

Int. 19. Was Joseph H. Racey, jr., examined during these supplementary proceedings as to his property? If yea, were you present at the examination.

(Objected to for all the several reasons stated before.

Ans. He was; and I was present and conducted the examination.

Int. 20. Was any property discovered the title to which stood in his name?

(Objected to for all the several reasons stated before, but especially because it calls for the contents of a written examination, and the opinion of the witness respecting that examination.)

Ans. There was property discovered, but he claimed it did not belong to him—that it belonged to his brother, William H. Racey.

Int. 21. What property was discovered which he claimed to belong to his brother, William H. Racey, as you have stated, and where was it situated?

(Objected to on all the grounds heretofore stated to any and all the preceding interrogatories.)

Ans. It was either No. 15 or 17 fish-stand in Centre Market, (the father, Joseph H. Racey, senior, claimed to own one of the stands; I think it was No. 15;) also the following property was discovered, so far as my recollection now serves me: one locker or stand, some ten or twelve feet long; a white marble slab; an iron safe; stove; desk; fish-tools, such as scales, choppers, and other tools such as are used
329 by fish-men; also an ice-box, a horse, cart, and harness, and a fish-house, attached to the stand; gas-fixtures. It was a very beautifully got up stand; very fine. All this property which I have mentioned was situated at these stands, and the horse, cart, and harness were used in the business. I might state that there was a bluish slate-stone slab, which I think was claimed by the father.

Int. 22. Where were the horse, cart, and harness kept when not in use?

(Same objection as to preceding interrogatory.)

Ans. Of my own knowledge, I can't say.

Int. 23. Were they kept at Centre Market?

(Same objection.)

Ans. The only way I can answer that question is by saying that I saw a horse and cart outside the stand, and they were pointed out to me as belonging to the stand, as being the property in question.

Int. 24. Besides the property that you saw at these stands, and used in connection with them, as already described by you, what property, if any, had Joseph H. Racey, jr., during the pendency of the supplementary proceedings you have named?

(Objected to for all the reasons stated to any and all the preceding interrogatories.)

Ans. None other that I discovered.

Int. 25. At the time you first knew those stands, who owned the personal property used at and in connection with them, if you know?

(Objected to for all the several reasons before stated, and also as calling for the opinion of the witness on matters of law as well as fact.)

Ans. That was the question in dispute, as to who owned the property. The judgment-creditor claimed that the property belonged to Joseph H. Racey, jr.; the judgment-debtor, Joseph H. Racey, jr., and William H. Racey, claimed that all the property there, except the blue or black stone, and the permit to stand No. 15, belonged to William H. Racey, and that the permit to one of the stalls and the bluestone belonged to Joseph H. Racey, sen.

330 Int. 26. Was it finally ascertained who owned the property; if yea, who was the owner?

(Objected to for all the reasons heretofore stated, but especially as it calls for the result of a judicial finding, which is a matter of record, or the opinion of the witness.)

Ans. It was. The referee reported in favor of the receiver and against William H. Racey, and found that this property which I have mentioned belonged to Joseph H. Racey, and never belonged to William H. Racey.

Int. 27. Was there a suit brought by the receiver of Joseph H. Racey

against William H. Racey? If yea, when was it commenced, and when did it terminate?

(Objected to for all the reasons heretofore stated.)

Ans. There was. It commenced February, 1860; it terminated by the entering up of judgment in January, 1863.

(Answer objected to as stating the contents of judicial records.)

Int. 28. Was there a suit commenced subsequently by you as counsel in regard to this same property? If yea, state when, who were the parties to it, and when did it terminate?

(Objected to for all the reasons heretofore stated.)

Ans. There was a suit commenced afterwards by the same receiver against George Moon, of this city. That action was instituted in Feb., 1863. I was not the attorney of record in that action, although the complaint and the papers were chiefly drawn up in my office, and I was cognizant of its progress from stage to stage. The attorney of record in that suit was William W. Northrop. I drew the complaint myself.

Int. 29. When did it terminate?

Ans. It terminated about January, 1864. It was about a year in litigation.

Int. 30. Prior to January, 1864, did the judgment-creditor, your client in these suits, collect his judgment of Joseph H. Racey, jr.?

(Objected to for all the reasons stated before.)

Ans. No; nor any part of it.

331 Int. 31. What did you do, if anything, from October, 1859, to January, 1864, to find property of Joseph H. Racey, jr.?

(Objected to, as heretofore.)

Ans. First, I examined Mr. Joseph H. Racey, jr., as previously stated, as to whether he had any property anywhere in the world, especially in New York. That examination was quite thorough. Mr. Joseph H. Racey, I believe, was examined three different days. I then examined Mr. W'm H. Racey. I examined several other witnesses, two at least; and during the progress of these supplementary proceedings and the action which the receiver brought against William H. Racey, I had a number of interviews with men who were in the market, and inquired of them in regard to the property of Joseph H. Racey, its character and situation. Two of those persons, I remember, were Mr. Miller, I think Mr. Peter Miller, and John Connelly—several others whose names I do not now remember. I also got hold of the examination in supplementary proceedings instituted before mine were—they were also against Joseph H. Racey, jr.; the examinations were quite voluminous—and read that over carefully.

(Adjourned to May 4, 1869, at 10 a. m.)

MAY 4, 1869.

Counsel for both parties present. Examination of Daniel S. Riddle resumed.

Int. 32. During the course of your proceedings and investigation of the property of Joseph H. Racey, jr., during the time last inquired of, what places, if any, did you visit with reference to the property of Racey? Please state fully where you went and what you did.

(Objected to, upon the grounds stated to any and all the preceding interrogatories.)

Ans. I went to Centre Market, in this city, at least half a dozen of times. There I made inquiries from a number of persons at various times in respect to the property of Joseph H. Racey, jr., where

332 any could be found, and of what it consisted. I also went to Sullivan street, to make inquiry in respect to horses which I had been informed he had at a stable somewhere in Sullivan street. I also called on Moon & Lamphier, and some one else, who were wholesale fishermen in Fulton Market, and inquired of them in respect of Joseph H. Racey's, jr., property. I also called on a young man, or boy, say sixteen or seventeen years old, in Marion street, who had been in Joseph H. Racey's, jr., employ, and inquired of him respecting the same. That is about all I remember now, except what I have stated in answer to a previous interrogatory. I might state that these inquiries were made at different times during the progress of the supplementary proceedings against Joseph H. Racey, jr., and the receiver's action against William H. Racey; that is, commencing in October, 1859, and during the years 1860, 1861, and 1862. I called on a Mrs. or a Miss A. A. Parker, East Houston street, and asked her in respect to the property where she resided—that is, the premises—having found on the records that that property had been owned at one time by Joseph H. Racey, jr., and inquired of her what interest, if any, he had in those premises, and in the furniture of the house where she resided, and also whether the furniture in the rooms occupied by Joseph H. Racey, jr., in Amity street, belonged to him. She said, I think, but I am not very positive on this point, that the furniture in the rooms of J. H. Racey, jr., in Amity street, belonged to her. She was then subpœnaed and examined in the supplementary proceedings against Joseph H. Racey, jr.

(So much of the preceding answer as gives conversations between the witness and other parties objected to, as being hearsay, and therefore inadmissible.)

Int. 33. How was she connected with Joseph H. Racey, jr.?

(Objected to, on all the grounds stated before.)

Ans. She said she was his friend.

Int. 34. During the course of the inquiries you have mentioned, what property, if any, belonging to Joseph H. Racey, jr., did you find beside the property you have already described as used at and connected with stands Nos. 15 and 17, Centre Market?

333 (Objected to, upon all the grounds stated to any of the preceding interrogatories.)

Ans. None other than what I have mentioned.

Int. 35. During the period last inquired of, what family, if any, had Joseph H. Racey, jr.?

(Objected to, upon all the grounds heretofore stated.)

Ans. Not any.

Int. 36. During the period last inquired of, was the personal property situated at said stands, or used in connection therewith, sold at auction? If yea, state when and by whom sold, and whether you were present at said sale.

(Objected to, upon all the grounds heretofore stated.)

Ans. It was sold about the 19th or 20th of January, 1863. It was sold by George Moon, as mortgagee. I was present at the commencement of the sale. I went there to forbid the sale, and to notify parties there that the property belonged to James Malcolm, the receiver.

Int. 37. What had George Moon to do with that property, and, if anything, when first?

(Objected to, upon all the grounds heretofore stated.)

Ans. He was the owner, as mortgagee, of two chattel mortgages. These mortgages embrace the property to which I have referred in a

previous answer. I think it was in 1861 these mortgages were made; at least one of them, I think, was made in 1861.

Int. 38. Who was the mortgagor in the mortgages to Moon, referred to by you?

(Objected to, upon all the grounds heretofore stated, and especially as not calling for the best evidence of the fact inquired of.)

Ans. William H. Racey.

Int. 39. From 1859 to the time of the auction-sale referred to, were there any other mortgages upon said property?

(Objected to, upon all the grounds heretofore stated.)

Ans. It is my impression that there was a mortgage previously given on that property.

Int. 40. By whom to whom?

(Objected to upon all the grounds heretofore stated.)

334 Ans. Well, it was given to George Moon, I think. I am not certain about that. The mortgagor was either William H. Racey or Joseph H. Racey, jr. I saw one mortgage that was made by Joseph H. Racey, jr., but that mortgage made by Joseph H. Racey, jr., may have been made previously to 1859. I don't remember the date of it.

Int. 41. At the time of the supplementary proceedings against Joseph H. Racey, jr., was there any mortgage upon said property, given by either of the Raceys?

(Objected to, upon all the grounds heretofore stated.)

Ans. I think not. I don't remember now that there was any mortgage. I am pretty sure there was not.

Int. 42. After the giving of the mortgages of William H. Racey to George Moon in 1861, as you have stated, until the mortgagee's sale in 1863, that you have mentioned, what property, if any, was there at said stands, or used in connection therewith, except stock in trade that belonged to Joseph H. Racey, jr., or either of the other Raceys?

(Objected to, for all the reasons stated to any of the preceding interrogatories.)

Ans. None other ever came to my knowledge than that which I have mentioned in a previous answer.

Int. 43. At the examination in the supplementary proceedings referred to, and at the trial of the suit brought by the receiver of Joseph H. Racey, jr., against William H. Racey, subsequently, state whether you were present at the examination and trial, and the names of the witnesses who were examined and testified.

(Objected to, upon all the grounds heretofore stated.)

Ans. In the supplementary proceedings, Joseph H. Racey, jr., William H. Racey, Mr. Mollenoer, (whose first name I don't remember,) and A. A. Parker, the Mrs. or Miss Parker of whom I have spoken, appeared, and were examined as witnesses. In the receiver's action against William H. Racey, Mr. Aaron Hardman, Alfred Ludlow, Mr. Mollenoer, I think, Peter Miller, John Connelly, William H. Racey, a Mr. Danforth, or Danfort, appeared and were examined. Mr. George Moon also

335 appeared upon the subpœna, but I don't think we examined him. A Mr. Tooney, whose first name I forget, clerk of the market at one time, also appeared, and was examined. There were one or two more men of the same market examined, but I forget their names.

Int. 44. What was the business of the Mr. Danforth or Mr. Danfort to whom you have referred?

(Objected to upon all the grounds heretofore stated.)

Ans. Carpenter.

Int. 45. Do you know where his place of business was at that time? If yea, please state it.

(Objected to upon all the grounds heretofore stated.)

Ans. I think I do. In Spring street in this city.

Int. 46. Will you state, without giving the contents of the pleadings in the suit of the receiver of Joseph H. Racey, jr., against William H. Racey, why the suit was brought and prosecuted?

(Objected to upon all the grounds heretofore stated.)

Ans. To determine the truth of a claim set up by William H. Racey to the property at those stands, or used in connection therewith, which he pretended to have by virtue of a purchase of the same on a judicial sale, made under an execution issued in favor of Mr. Mollenoer, whom I have referred to as a witness, against Joseph H. Racey, jr., some time previous to the institution of the supplementary proceedings against Joseph H. Racey, jr., already referred to.

Int. 46. During the pendency of the supplementary proceedings instituted by your client against Joseph H. Racey, jr., and the suit of the receiver against William H. Racey, in whose name was the business at those stands carried on?

(Objected to on all the grounds heretofore stated.)

Ans. In different names. When the supplementary proceedings were first commenced, J. H. Racey was the name immediately over the stand, also over the door leading from the street into the market, and also on the outside of the fish-house. Then, after the proceedings had been commenced, the name of William H. Racey appeared over the stand. Then that was superseded over the stand by the name of Racey & Co., or J. H. Racey & Co., or it may have been William H. Racey & Co. I
336 know it was Racey & Co., but I am not sure whether there was added to that the J. H. or W. H., or whether either of those initials were added; this company name also appeared on the fish-house outside. It was claimed during the progress of the receiver's action that a John H. Racey owned the concern.

Int. 47. Why was the suit of Malcolm against Moon, already mentioned by you, brought and prosecuted?

(Objected to on all the grounds heretofore stated.)

Ans. To recover the value of the property at the stands, or used in connection with them, which Mr. Moon had taken under those chattel mortgages and sold at auction, as stated in a previous answer.

Int. 48. Have you, at any time, seen or examined a freezing-apparatus, or freezer for freezing fish, belonging to Middleton, Carman & Co., and situated at 134 Beekman street? If yea, state when.

(Objected to upon all the grounds heretofore stated.)

Ans. I have; this morning about nine o'clock.

Int. 49. From the commencement of the supplementary proceedings against Joseph H. Racey, jr., until January 1st, 1864, please state whether there was a freezing-apparatus, or freezer similar to the one you saw this morning, situated at or used in connection with said stands at Centre Market belonging to Joseph H. Racey, jr., or William H. Racey, or any Racey?

(Objected to upon all the grounds heretofore stated.)

Ans. Not to my knowledge.

Int. 50. If there had been such a freezer during the period inquired of, or any part thereof, situated at those stands, or used in connection therewith, and belonging to Joseph H. Racey, jr., or William H. Racey, would you have known it?

(Objected to upon all the grounds heretofore stated.)

Ans. If there had been any such there, or used in the business in connection therewith, between October, 1859, and January, 1863, say the 19th of January, 1863, I think I would have known it, from the investigations I had made, as stated in previous answers.

Int. 51. During the period stated by you in your last answer, how many different persons, doing business in or employed in Centre Market, did you make inquiry of in regard to the property of the Raceys, as heretofore stated by you?

337 (Objected to upon all the grounds heretofore stated.)

Ans. At least eight I can now count up.

Int. 52. Are you familiar with the laws of the State of New York, during the time last mentioned, relative to the proceedings supplementary to an execution returned unsatisfied, that may be instituted by the judgment creditor, and also the laws of said State relating to the exemption of personal property of a judgment debtor from levy on an execution or attachment on mesne process?

(Objected to on all the grounds heretofore stated.)

Ans. I am.

Int. 53. Will you state whether the personal property situated at those stands, or used in connection therewith, already described by you, during the same period was, or was not, exempt from levy or attachment, as aforesaid?

(Objected to on all the grounds heretofore stated.)

Ans. It was not. If it belonged to Joseph H. Racey, senior, as I think it was pretended at one time during the progress of the receiver's action, there may have been tools used there in the fish business exempt to the amount of twenty-five dollars, under the decisions given in respect to property exempt by the revised statutes; but it was not exempt in respect to any of the other Raceys, they not being householders, to my knowledge.

Int. 54. State whether or not, during the same period, a freezing-apparatus, or freezer similar to that you saw this morning, larger or smaller, was exempt from levy on execution or attachment on mesne process.

(Objected to on all the grounds heretofore stated.)

Ans. No.

Int. 55. During the same period last mentioned, had Joseph H. Racey, jr., any other creditors besides your client, Mr. Hardman? If yea, state how many.

(Objected to on all the grounds heretofore stated.)

Ans. He had. Messrs. Arnoux, tailors in Broadway. They had a judgment against him. I can't state as to others, except from information.

338 Int. 56. What was the amount of Mr. Hardman's claim against Joseph H. Racey, jr.?

(Objected to on all the grounds heretofore stated, and especially because the record is the best evidence of the fact.)

Ans. The amount of the judgment in favor of Mr. Hardman against Joseph H. Racey, jr., was $478.73, with interest from the 29th day of November, 1858.

Int. 57. About how much did the counsel charges and expenses incurred by Mr. Hardman in the pursuit of Mr. Joseph H. Racey, jr., or his property, amount to?

(Objected to on all the grounds heretofore stated.)

Ans. Well, about $400, including counsel fees and referee's fees. I think it is over $400.

Int. 58. From the commencement of the supplementary proceedings against Racey until January, 1864, do you know the pecuniary circumstances of Joseph H. Racey, jr.? If yea, please state what they were.

(Objected to on all the grounds heretofore stated.)

Ans. I do, from the investigation which I made, as given in my previous answers, and also from inquiries made subsequent to January, 1863. He was insolvent.

Int. 59. What property, if anything, did he have during that period besides his wearing apparel?

(Objected to on all the grounds heretofore stated.)

Ans. None that came to my knowledge, except this disputed property which I have already mentioned, and which the referee found to be his.

Int. 60. Since your examination before the intermission have you ascertained the full name of the Mr. Danforth, or Danfort, the carpenter, spoken of by you in a previous answer? If yea, please state it.

(Objected to on all the grounds heretofore stated.)

Ans. I have. His name is John W. Danford. I ascertained it from the minutes of his examination.

Int. 61. At the time of his examination, on which side did he testify, and who called him as a witness?

(Objected to on all the grounds heretofore stated.)

339 Ans. He was called by the defence, and testified on the side of the defence.

Int. 62. In the case of Hardman against Joseph H. Racey, jr., will you state whether any alias execution was taken out by the plaintiff subsequent to the supplementary proceedings by him against Racey? If yea, when?

(Objected to on all the grounds heretofore stated, and especially as calling for secondary evidence of the fact inquired of.)

Ans. My impression is that there was, but I am not now able to give the time of its issue without referring to the record.

Int. 63. Do you wish to make any statement or correction of your previous answer as to the dates or number of the mortgages made to George Moon, previously mentioned by you? If yea, please make it, and give the dates of the mortgages as near as you can.

(Objected to on all the grounds heretofore stated.)

Ans. I do. The correction is this: There was a mortgage given by Joseph H. Racey, jr., to George Moon—that is, a chattel mortgage—upon the property at these stands before the year 1858; then there was a mortgage dated March, 1861, given by William H. Racey to George Moon, upon the property at these stands, and put upon record in July, 1861. This latter mortgage was refiled in January, 1863, and also another mortgage upon property at these stands to George Moon was filed at the same time in January, 1863. These were the two mortgages that Mr. Moon foreclosed in January, 1863, of which I spoke in a previous answer. These mortgages did not embrace the same property, one being on the horse, cart, and harness, and the other embraced the other property at the stands which I mentioned in a previous answer. My recollection is that both these foreclosed mortgages bore the same date, March, 1861. I had the mortgage given by Joseph H. Racey, jr., to Moon, and the one given by William H. Racey to Moon, the latter filed July, 1861, in my mind this morning when I testified in respect of the mortgages.

(Answer objected to, as stating matters of record and contents of written documents.)

Int. 64. Do you know the general reputation for truth and veracity of Joseph H. Racey, jr.?

340 (Objected to on all the grounds heretofore stated.)

Ans. I do.

Int. 65. Please state what it is.

(Objected to, on all the grounds heretofore stated.)

Ans. Bad.

Int. 66. Do you know what his general reputation for truth and veracity was from the year 1859 to 1864? If yea, please state what it was.

(Objected to, on all the grounds heretofore stated.)

Ans. I do. It was bad.

Int. 67. Do you know the general reputation for truth and veracity of William H. Racey?

(Objected to, on all the grounds heretofore stated.)

Ans. I do.

Int. 68. Please state what it is.

(Objected to, as before.)

Ans. It is bad.

Int. 69. Do you know his general reputation for truth and veracity from 1859 to 1864? If yea, please state what it was.

(Objected to, as before.)

Ans. Well, I do from 1859 to say January, 1863. During that time it was bad.

(Adjourned to May 5, 1869.)

WEDNESDAY, *May* 5, 1869.

Present, counsel for the respective parties.

Int. 70. In answer to interrogatory No. 50 you have used the expression, "I think I would have known it." Will you please state how positive you are in regard to it?

Ans. I have no doubt at all that I would have known it if there had been any on the premises or connected with it.

341 Cross-examined by Mr. Avery, without waiving any of the objections taken to the interrogatories preceding and the answers thereto; and the interrogatories upon the matters and subjects objected to in the examination in chief put de bene esse.

Cross-int. 71. Were you counsel for Hardman in his original suit against Racey?

Ans. I was not. A man by the name of Samuel Brown recovered the judgment and issued the execution. He was the attorney.

Cross-int. 72. In the proceedings on the execution and supplementary thereto, did you act in concert with Mr. Brown?

Ans. I did not. I had the exclusive management of the proceedings.

Cross-int. 73. What arrangement did you make with Hardman in regard to the collection of the execution or the amount of the judgment?

Ans. None, except this, that I promised to do it cheap, as it was a sort of an entering wedge to his business. He was the senior partner of Hardman & Osborn, who were real-estate agents in this city, and had the management of a number of large estates, among which were the Cruger and Van Rensellaer and Turnbull estates and Wilkins estate, and they had beside a good deal of other busines of a similar kind, and Hardman promised me his business, and the business of the firm.

Cross-int. 74. Did you not agree with him to do the business in the Racey matter on shares?

Ans. No, sir, from the very fact he gave me a fee.

Cross-int. 75. Have you not so stated?

Ans. I have not.

Cross-int. 76. Did you collect the amount of judgment?

Ans. The amount was not collected.

Cross-int. 77. Has it ever been collected?

Ans. Not the whole of it. It was settled in 1865, by the payment of $125 or $150, and satisfaction given to Edward Blankman, who acted for Joseph H. Racey, jr.; that is, that amount was paid to me
342 by Mr. Blankman. How much he got from Mr. Racey, I don't know.

Cross-int. 78. Were you acting in the settlement for Mr. Hardman?

Ans. No, sir, I was acting for myself. When the referee, Leo Livingston, in the receiver's action against Wm. H. Racey, made his report, I mean the action which I mentioned in my direct, the referee sent in his bill for $250 to me. I caused Mr. Hardman to come to my office, and I informed him of the report, and also of the bill. He was dissatisfied with the amount, and complained that he had paid out a considerable amount already, and was vexed and rather declined to pay any more. We then made this agreement that he should pay the referee's fee, $250, assign to me the judgment against Joseph H. Racey, jr., in payment of my charges for whatever balance was due me yet on my services in the supplementary proceedings against Joseph H. Racey, jr., and in the said receiver's action. I gave him a receipt in full on the spot. He drew a check for Mr. Livingston, the referee, for his $250, and shortly afterwards, in pursuance of the agreement, he executed an assignment to me. The judgment then became mine.

Cross-int. 79. What was the date of that transaction between Hardman and yourself?

Ans. In January, 1863. The judgment was assigned some time afterwards.

Cross-int. 80. What amount had Hardman previously paid you on account of your fees, and for your services?

Ans. In all, about $50.

Cross-int. 81. How many times before that assignment to you did you attempt to negotiate a settlement with Racey?

Ans. Well, I don't know that I made any attempt to settle except through these litigations. I don't remember of any now.

Cross-int. 82. Don't you remember saying to Mr. W'm H. Racey, that you were getting nothing out of the litigation for your services, and would like to settle the matter with his brother, or substantially that?

Ans. I don't remember anything of the kind.

343 Cross-int. 83. Didn't you call at the stands in the market of Joseph H. Racey, jr., and propose a settlement to him?

Ans. I called at the stand, but not to propose a settlement with him, other than through the litigations.

Cross-int. 84. Did you have any altercation at any time, when you called at the stands, with Joseph H. Racey?

Ans. None other than this, that I went up there once during the litigation in the receiver's action, while he was at the stands at work, and asked him politely to allow me to look through the fish-house to see what property there was there, and especially to see an iron safe, its size and condition. [It having been stated to me that a smaller safe had been exchanged for a new and a larger one.] He cursed me, and told me to clear out, and I went away without getting in the fish-house.

(The part of the answer in brackets objected to as not being responsive.)

Cross-int. 85. Was that the only time you had any altercation with Joseph H. Racey, jr.?

Ans. This was the only time at the stands. During the time he was being examined under supplementary proceedings he several times became abusive, and a few words passed between us, and nothing else; and once before the referee, Mr. Livingston, he was present, when, upon my asking a question of a witness, he used some abusive remarks, but I did not respond; and I think also when Miss or Mrs. A. A. Parker was examined in the supplementary proceedings he made some abusive remarks again, and I made some reply.

Cross-int. 86. During these several interviews you felt that Mr. Racey was indulging in language in reference to yourself entirely uncalled for?

Ans. I thought the remarks were uncalled for by the circumstances.

Cross-int. 87. And you think so now?

Ans. I do.

Cross-int. 88. I think you have said that W'm H. Racey claimed the property of the stand by virtue of a purchase made at a sheriff's
344 sale. In the supplementary proceedings, and those suits which grew out of them, was not the validity of that sheriff's sale one of the questions in issue?

Ans. It was; that is, the mode of conducting the sale.

Cross-int. 89. You have said that the receiver, appointed under supplementary proceedings such as you have described, becomes entitled to all the property of the judgment-debtor. At what date does that right accrue to the receiver, and is there any limit under the law either as to the time or the amount?

Ans. The receiver becomes vested with all the property which the debtor had at the time that the order instituting the supplementary proceedings is served on the judgment-debtor, and with the right of bringing an action to set aside any transfers of property which he may have made, or to which he may have been a party, previous to the service of the said order.

Cross-int. 90. Did you personally serve the notice of the commencement of the supplementary proceedings on Joseph H. Racey, jr.?

Ans. I did.

Cross-int. 91. When?

Ans. The early part of October, 1859?

Cross-int. 92. During the pendency of the proceedings supplementary, or those growing out of them, what, if any, other proceedings are open to the judgment-creditor?

Ans. He may issue an alias execution, and try and collect his judgment in that way.

Cross-int. 93. Do you, in fact, know if Hardman took an alias execution after October, 1859, and during the pendency of the proceedings supplementary against Racey?

Ans. It is my impression, as I stated yesterday, that an alias execution was issued by me, as the attorney, after the institution of supplementary proceedings; but whether it was issued during the progress of the receiver's action or after the judgment had been assigned to me I cannot now state without looking at the record. If the execution was issued after I obtained the assignment, it was entitled in the action, and signed by me as attorney.

Cross-int. 94. What is the effect of the settlement or satisfaction
345 of the judgment upon which supplemental proceedings are instituted on the receiver's right to the judgment-debtor's property?

Ans. The proceedings fall, and the receiver is divested of all right to the property, and it re-invests in the debtor.

Cross-int. 95. If I have not misunderstood you, the receiver in the case of Joseph H. Racey, jr., obtained no right of property in, or possession of, any property acquired by Racey after October, 1859. Is that so?

Ans. That is so, except it was substituted property for something which actually existed.

Cross-int. 96. Then, upon the satisfaction of the Hardman judgment, which I understand you to say has been entered, all property which you claimed to have been in the receiver, by operation of law, has been re-invested in Racey, has it?

Ans. Well, I suppose that would be the effect of the law where there is no provision to the contrary.

Cross-int. 97. Was there any provision to the contrary in that case?

Ans. Come to think of it, that in the settlement of the judgment with Mr. Blankman I gave him an assignment, or some stipulation, or he gave me a stipulation, that that settlement should not affect the judgment against W'm H. Racey.

Cross-int. 98. Don't you know who gave the stipulation—you or Blankman?

Ans. I do not now remember.

Cross-int. 99. Would such a stipulation as that override the effect or operation of the law on the rights of J. H. Racey, jr., or merely give you, or whoever was entitled to it, a personal right or remedy against W'm H. Racey?

Ans. I will answer that in this way: that the settlement with Mr. Blankman terminated all claims which we had on the judgment against Joseph H. Racey, jr. It would not override the rights of Joseph H. Racey except he was a party to the arrangement.

Cross-int. 100. Even if Joseph H. Racey, jr., were a party to such an agreement or stipnlation, would the property still remain vested in a receiver?

346 Ans. Well, that would depend upon the agreement. If the agreement was that such property as was then in the possession of the receiver should be applied by him through the court to the judgment, I don't see why the agreement would not be binding.

Cross-int. 101. But in the Racey case the judgment was satisfied by the payment of a stipulated sum, and there was no such agreement as you suggest, was there?

Ans. I am unable now to state further the purport of the stipulation or agreement of which I have testified than I have already mentioned.

Cross-int. 102. Really, and as matter of fact, do you desire it to be understood that you, as the assignee of the Hardman judgment, now have any claim on Joseph H. Racey, jr., or upon any property which you claim was ever vested in the receiver?

Ans. I will answer that question the same as before, that when the settlement was made with Mr. Blankman, acting for Joseph H. Racey, jr., that that settlement terminated and satisfied every claim which Mr. Hardman or I had under that judgment against Joseph H. Racey, jr., upon him or his property; but the stipulation which I refer to was not to affect the judgment which we had against W'm H. Racey.

Cross-int. 103. When you have been asked in the examination-in-chief about property used in connection with the business carried on at stands 15 and 17, Centre Market, what did you understand by that term "used in connection with?"

Ans. By those words I understood, and meant to convey, such property as the horse, cart, and harness.

Cross-int. 104. Did you know that there was used by the Raceys in their business in Centre Market a cellar, between the years 1859 and 1864?

Ans. Yes. [Peter Miller, and I think some other of the men around the market there, told me that they had some use of a cellar underneath the market, where they stowed away old fish-baskets, but nothing else was in it. This was told me during the progress of the receiver's
347 action.] I did not go in the cellar for the reasons stated, and for the reason that I could not get in without the Raceys' permission.

(All answer in brackets objected to.)

Cross-int. 105. Did you know that they had in that cellar during the period inquired of an ice-grinding machine, which they used in connection with their business?

Ans. I did not.

Cross-int. 106. Nor an eel-tank?

Ans. No.

Cross-int. 107. Nor a large ice-box or freezer?

Ans. No; I never heard of anything of the kind there?

Cross-int. 108. If any of those articles had been there used by them as inquired of, you have no doubt, have you, that you would have known it?

Ans. As I said before, I never was in the cellar, and the information which I had as to the contents of what was in the cellar I received from persons in the market, as I have already stated, and both Joseph H. Racey, jr., and William H. Racey swore in the supplementary proceedings that there were no other property or articles at or about the stands, or used in connection therewith, than that which I have stated in an answer on the examination-in-chief.

Cross-int. 109. What year did they so testify?

Ans. In October, 1859.

Cross-int. 110. When were you first consulted in regard to this present pending suit?

Ans. Last fall some time.

Cross-int. 111. By whom?

Ans. Mr. Piper, the complainant.

Cross-int. 112. Have you been acting as counsel, or otherwise, for him in the suit?

Ans. Not otherwise than this: He desired of me the names of witnesses in respect to Joseph H. Racey's business, and I gave him the names of some of the persons who had testified in the receiver's action, and told him where I supposed he would be able to find them; and at his request I called upon the inspector of markets, in the comptroller's office, and procured for him a search of the tenants who had
348 occupied certain numbers of compartments in the cellar of Centre Market, and also called on Mr. John Dimmick, and got for him the minutes of the testimony taken by the referee, Leo Livingston, in the receiver's action against W'm H. Racey. I may have done some other things which I do not now remember.

Cross-int. 113. Have you not examined witnesses and taken the affidavits of witnesses, one or more?

Ans. Yes; I remember drawing a short affidavit for Mr. Tuomey, who was brought into my office by Mr. Piper, the plaintiff; but I don't remember any other affidavit.

Cross-int. 114. Are you under retainer from Mr. Piper?

Ans. No, sir; Mr. Piper paid me for drawing the affidavit, and also for getting the search from the market-inspector's office, and paid me five dollars, which Mr. Dimmick's clerk charged me for hunting up the referee's minutes, already referred to.

Cross-int. 115. Do you know Mr. Irish, who has been employed by Mr. Piper in this case; and if yea, have you had any consultations or interviews with him in regard to it?

Ans. I do. He and Mr. Piper came into my office together, and he himself came alone several times, and inquired of me as to the names and whereabouts of witnesses. I gave him this information as far as I knew, and that is all the consultation I had with him.

Cross-int. 116. How much have you received from Mr. Piper as compensation in connection with this case?

Ans. Mr. Piper paid me ten dollars for drawing up the affidavit of Mr. Tuomey, and ten dollars for getting the search in the comptroller's office and for calling upon Mr. Dimmick for the referee's minutes.

Cross-int. 117. What, if any, compensation do you expect to receive from Mr. Piper for your services as a witness in this case?

Ans. I don't know that I am to receive any, except this, that I had to look up some old records of those suits mentioned in my previous answers, and he said he would pay for that, but there is no agreement whatever between us for testifying, nor have I been paid anything for that trouble.

349 Cross-int. 118. Do you mean to say that you do not expect any compensation for the time spent as a witness in this case?

Ans. I expect he will pay me for the trouble of searching up the records. Whether he will pay my witness-fees for being here, that I don't know; but I expect he will my legal fees—one dollar fifty a day.

Cross-int. 119. Do you know, as a matter of fact, that the mortgages mentioned in your answer to the 63d interrogatory were given at the times you therein stated?

Ans. That is my recollection at present.

Cross-int. 120. From what do you derive your knowledge of the facts therein stated?

Ans. I can't answer that question in its present form, the question being indefinite.

Cross-int. 121. Do you wish to be understood as saying that you know the relation existing between Amanda A. Parker and Joseph H. Racey, jr.?

Ans. Only from hearsay and what she told me.

Cross-int. 122. Do you know that she is not now, and has not been for several years, the wife of Joseph H. Racey, jr.?

Ans. I don't know anything about it, except what I have stated in my previous answer, and also in my answer in my examination-in-chief.

Cross-int. 123. When last did you have an interview or conversation with her?

Ans. Not since her examination in the supplementary proceedings against Joseph H. Racey, jr., in the year 1859.

Cross-int. 124. From the latter part of the year 1861 down to the present time, have you known what William H. Racey's business was?

Ans. Partly I do. In the latter part of '61—near the close of '61—he went to the war. That, of course, I have from his own statement and from the statements of his friends. I saw him in uniform at that time. Since his return he has been connected with some insurance-office and acting as lawyer. These statements I have from himself.

350 Cross-int. 125. Do you know when he returned?

Ans. I do not.

Cross-int. 126. Since the fall of 1861, have you had any communication with any person with whom William H. Racey transacted business or was dealing during that period?

Ans. None, except I called on Mr. Moon in January, 1863, [and notified him of the decision of the referee in the receiver's action against William H. Racey, and that the property which he claimed as mortgagee belonged to the receiver.]

(That portion of the answer in brackets objected to as not responsive to the question.)

(The witness desires to say that he wants to make an explanation or correction to a previous answer in the cross-interrogation. It is the answer to cross-interrogatory 109. The question was, "What year did they so testify?" My answer was, "October, 1859." I wish to correct that by saying that they were examined in October, November, 1859, and January, 1860; that is, Joseph was examined on the 17th and 26th October, 1859, and, I think, on the 26th day of January, 1860, and William H. Racey was examined on October 28th, November 3d, 1859, and January 26, 1860. This latter examination came in this wise: I instituted proceedings directly against William H. Racey, as a third party, under our code of practice. He was examined on that proceeding, and, I think, Joseph H. Racey, too.)

Cross-int. 127. Were not those examinations confined to inquiries respecting the property held by Mr. Joseph H. Racey, or belonging to him at the time the order for examination was issued or served?

Ans. I can't tell. They should have been.

Redirect:

Int. 128. Was William H. Racey examined again in regard to that property? If yea, state in what suit, and when.

(Objected to for the reasons stated to the several interrogatories-in-chief, and also as not being called for by anything in the cross-examination.)

351 Ans. He was. His deposition de bene esse was taken in the receiver's action against him previous to his going to the war in December, 1861. It was late in the fall of 1861, November or December.

Int. 129. In cross-interrogatory 104 you are asked about a cellar used by the Raceys in their business at Centre Market between the years 1859 and 1864, and in subsequent cross-interrogatories as to your knowledge of certain property that the Raceys had in that cellar. Will you state whether or not, at the trial of the receiver's action against William H. Racey, there was any testimony coming from the defendant's witnesses as to property of the Raceys, or either of them, in that cellar?

(Objected to upon the ground stated to the last preceding interrogatory.)

Ans. Yes; there was. Mr. Danford, one of defendant's witnesses, [testified there was an ice-box in the cellar.]

(The portion of the answer in brackets objected to as not responsive, and because it is hearsay.)

Int. 130. When did Mr. Danford testify in that case?

(Objected to for the reason stated in the objection to interrogatory 128.)

Ans. In January, 1862.

Int. 131. In answer to cross-interrogatory 95, you speak of "substi-

tuted property for something which actually existed." Will you please explain fully what you meant thereby?

(Objected to for the reasons stated in the objection to the 128th interrogatory.)

Ans. By "substituted property" I meant where one article is exchanged for another, the article obtained on the exchange would be substituted property, or where money is used to purchase an article, or an article sold, and another article or articles purchased with the proceeds. The articles so obtained would be substituted property and not after-acquired property, which means property earned or obtained after the institution of the supplementary proceedings, and not with funds existing at the time of the institution of the proceedings. The word
352 "actually" in my answer to cross-interrogatory 95 should be "already," for I used that word at the time.

(The witness wishes to make a limitation to his answer to cross-interrogatory 104. He says that my inquiries into the property of Joseph H. Racey, jr., did not extend beyond the spring of 1862. The taking of the evidence in the receiver's action against William H. Racey terminated in the early part of the summer of 1862—I think June, 1862. After that I made no further inquiry concerning any property belonging to either of the Raceys in Centre Market.)

Cross-int. 132, de bene esse. In the action brought by the receiver against William H. Racey, he sought to recover such property as belonged to Joseph H. Racey, jr., in October, 1859, did he not?

Ans. Yes.

Redirect:

Int. 133. During the progress of the receiver's action against William H. Racey and your investigations, did you find any substituted property referred to by you in your answer to cross-interrogatory 95?

(Objected to for all the reasons stated in objections to any and all the preceding interrogatories.)

Ans. There was, and the referee so reported.

(That part of the answer which refers to the referee's report objected to as giving the contents of a judicial record.)

Int. 134. What property did you find that was substituted?

(Objected to on all the grounds heretofore stated, and especially on the ground that the question is not called for by anything in the cross-examination.)

Ans. I cannot now positively state, but I think the iron safe was one article. My impression is that the horse was substituted property.

D. S. RIDDLE.

353 *Deposition of Thomas Boesé, taken, subscribed, and sworn to before R. E. Stilwell, examiner.*

THOMAS BOESÉ, being called and duly sworn as a witness on the part of the complainant, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Thomas Boesé; age, forty-two; residence, 134 East Thirty-eighth street, New York City; occupation, lawyer.

Int. 2. How long have you been a lawyer?

Ans. About twenty-one years.

Int. 3. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market, and William H. Racey, formerly fish-dealer in Centre Market? If yea, how long have you known each of them?

Ans. Yes. I knew each of them over twenty-five years.

Int. 4. From the first of October, 1859, until January, 1863, had you any occasion to learn, and did you learn, what property Joseph H. Racey, jr., had during that period?

(Objected to as immaterial and irrelevant.)

Ans. Yes. Joseph H. Racey, jr., was a client of mine during most of that period, if not all, in a suit of Aaron Hardman against him, in which suit I became acquainted with his private affairs.

Int. 5. Do you know the fish-stands Nos. 15 and 17, Centre Market, New York City? If yea, how long have you known them?

(Objected to for the reasons stated to the preceding interrogatory.)

Ans. Joseph H. Racey, about that time, had two fish-stands in Centre Market about the year 1859, to the best of my recollection. I do not remember their numbers, but think they were Nos. 15 and 17.

Int. 6. Do you know the fish-stands at Centre Market occupied by Joseph H. Racey, jr., or William H. Racey, from October, 1859, to January, 1863?

(Objected to for the reason before stated.)

354 Ans. I do.

Int. 7. Do you know, or did you know, the personal property used at those stands, or in connection therewith, by Joseph H. Racey, jr., or William H. Racey, or any Racey, during the period last inquired of, or any part thereof?

(Objected to for the reason before stated.)

Ans. I think I did know generally the property that was used on the stands, but I did not know the property used in connection therewith.

Int. 8. Did you know of any property used in connection therewith belonging to either of the Raceys?

(Same objection as before.)

Ans. No; not of my own knowledge.

Int. 9. Was there a suit brought during that period against either of the Raceys in regard to the personal property used at, or connected with, those stands?

(Objected to for the reason before stated, and also because no foundation has been laid for the introduction of such testimony.)

Ans. There was a suit brought, I think, against William Racey; but for what particular property I can't state, but think it was based on an examination supplementary to execution in the suit of Hardman against Joseph H. Racey, jr.

Int. 10. Without stating the items of the property to which that suit related, will you please state generally what property it related to?

(Objected to for the reason stated in objection to last interrogatory.)

Ans. I cannot state any more definitely than I have stated in my previous answer.

Int. 11. At the time of the supplementary proceedings referred to by you, who owned the personal property at those stands?

(Objected to on all the grounds before stated; also, as involving a question of law and fact, and calling for the conclusion of the witness.)

355 Ans. Joseph H. Racey, jr., and William H. Racey, on the examination in that proceeding, disclosed all the facts that I know of in relation to the matter.

Int. 12. What were the facts you know in regard to the title of the property?

(Objected to for the reason stated in objection to the last preceding interrogatory, and also as calling for the contents of judicial writings.)

Ans. I cannot tell now, owing to the lapse of time since the examina-

tions were taken, and also because my conclusions were disputed at the time by those representing the plaintiff in the suit.

Int. 13. Without giving the details of that examination, what was the fact of ownership, as you understood it?

(Objected to for the reason stated in the last preceding interrogatory.)

Ans. I have already answered that.

Int. 14. Between what parties did the disputed title to that property lie?

(Same objection as before.)

Ans. I think the dispute was between Aaron Hardman and Joseph H. Racey, jr., and William H. Racey.

Int. 15. Who was the plaintiff in the suit brought against William H. Racey?

(Objected to on all grounds heretofore stated.)

Ans. James Malcolm, receiver.

Int. 16. What do you mean by receiver?

(Objected to on the grounds heretofore stated.)

Ans. The receiver appointed by the court in the suit of Aaron Hardman against Joseph H. Racey, jr.

Int. 17. What was he receiver of?

(Objected to on all the grounds heretofore stated.)

Ans. He was appointed receiver of the right, title, and interest of Joseph H. Racey, jr., to the property on the stands 15 and 17, Centre Market.

Int. 18. How much of the property of Joseph H. Racey was he receiver of?

(Objected to on all the grounds heretofore stated.)

356 Ans. I presume all that was disclosed on the examination of Joseph H. Racey.

Int. 19. Was he a receiver of all the property of Joseph H. Racey, jr., wherever situated, or only a part of it; and if only a portion, what portion was excepted?

(Objected to for all the reasons heretofore stated, and especially as giving the contents of judicial papers.)

Ans. I could not tell without seeing the order of the court appointing the receiver.

Int. 20. Do you know of any property of Joseph H. Racey, jr., that Malcolm was not receiver of at that time?

(Objected to on the grounds heretofore stated.)

Ans. I answered that substantially in a previous answer. I cannot tell, because I do not know the extent of the order of the court.

Int. 21. Was all the personal property on these stands, or used in connection therewith by Joseph H. Racey, jr., or either of the Raceys, in dispute at that time as to the title?

(Objected to as before.)

Ans. I presume that the representatives of the plaintiff intended to dispute the title of Joseph H. Racey to all the property on the stands, or used in connection therewith; but whether they did or not, I cannot tell without a re-examination of the pleadings and other papers in the case.

Int. 22. Will you examine exhibit marked "No. 2, April 30th, 1869,' and then state whether any personal property of Joseph H. Racey, jr., situated at, or used in connection with, those stands, was excepted from the receivership of James Malcolm, the receiver you have already referred to?

(Objected to upon all the grounds heretofore stated, and also as calling for the construction of a written paper, the admissibility of which is objected to, and the opinion of the witness of the effect as matter of law of that paper.)

Ans. From reading the exhibit, I should think that no property was exempted.

Int. 23. How long did this suit brought by the receiver against William H. Racey continue?

357 (Objected to on all the grounds heretofore stated.)

Ans. I suppose two or three years. I can't tell exactly.

Int. 24. Were you counsel in that case? If yea, how long did you act as counsel therein?

(Objected to as before.)

Ans. I acted until the report of the referee came in. My impression is that I summed up the case.

Int. 25. When did you cease to act in the case? State, as near as you can, the year or month.

(Objected to as before.)

Ans. My impression is that it was in the latter part of 1862.

Int. 26. During the pendency of that case, was there any evidence taken as to what items of property there were at those stands, or used in connection therewith, or their value?

(Objected to as before.)

Ans. There was; both as to items used and their value.

Int. 27. About how much time elapsed from the commencement of the taking of the evidence in that suit until the evidence was closed?

(Objected to as before.)

Ans. I cannot say exactly, but I should say several months.

Int. 28. In what year was the evidence taken?

(Objected to as before.)

Ans. My impression is that it was taken in 1860 and 1861.

Int. 29. Was any evidence taken in that case in 1862?

(Objected to as before.)

Ans. I am not positive.

Int. 30. During the time from the commencement of the supplementary proceedings you have referred to until the end of the case of Malcolm against William H. Racey, do you know, or did you know, the pecuniary circumstances of Joseph H. Racey, jr.?

(Objected to as before.)

Ans. Only so far as was disclosed in the proceedings in the suit.

Int. 31. Will you please state what his pecuniary circumstances were as to solvency during the period inquired of?

358 (Objected to as before.)

Ans. As disclosed by the examination, he was insolvent.

Int. 32. During the period last inquired of, who was in possession of the personal property on those stands or used in connection therewith?

(Objected to as before.)

Ans. I will have to answer that by saying that I could not tell without a careful examination of the proceedings supplementary to execution and the evidence in the suit of the receiver against William H. Racey.

Int. 33. Did you visit or see those stands during the same period?

(Objected to as before.)

Ans. Yes, sir.

Int. 34. How often?

(Objected to as before.)

Ans. About fifty times.

Int. 35. Who was in possession of the personal property on those occasions?

(Objected to as before.)

Ans. All I know about it is by the parties who waited on me when I went there to purchase fish or game. Sometimes I saw Joseph H. Racey, jr., there, and at other times W'm H. Racey, and on other occasions persons who were strangers to me.

Int. 36. During the period last inquired of, did you know or learn of a preserving-apparatus, or freezer for freezing fish, being situated on those stands, or used in connection therewith, and belonging to Joseph H. Racey, jr., or either of the Raceys?

(Objected to as before.)

Ans. No, sir; I saw at the stand the usual refrigerator. At one time, I can't state the time, I saw Mr. Racey with a frozen fish that he was bringing in, in the door-way, to his stand; but it was after the commencement of the suit of Hardman against Racey. My opinion is that this was in 1862 or 1863, as near as I can get at it. It may have been a salmon or codfish; it was a large fish. After that he met me
359 in the street, and wanted me to go down into his cellar to see his freezer in which he froze his fish. This must have been a short time after I saw the frozen fish.

Int. 37. Did you purchase fish for your own use from Joseph H. Racey, jr., during the period last inquired of?

(Objected to.)

Ans. I did.

Int. 38. Prior to January, 1864, how long had you traded or bought fish at his stands?

(Objected to.)

Ans. Not less than eight years.

Int. 39. How long after the beginning of 1864?

(Objected to.)

Ans. From that time until now.

Int. 40. Did you ever purchase frozen fish from those stands, or of Joseph H. Racey, jr.?

(Objected to.)

Ans. I can't tell. We have an understanding with Mr. Racey to send fish to my house once a week one season of the year, and twice a week the other, and as we dealt with him a long time, we left it to his judgment what to send us.

Int. 41. Did you ever buy any frozen game from those stands, or of Joseph H. Racey, jr.?

(Objected to.)

Ans. I have never purchased any game from Mr. Racey.

Int. 42. Did you see the freezer that he mentioned to you?

(Objected to.)

Ans. No, sir.

Int. 43. At the time of the supplementary proceedings referred to by you, or during the pendency of the suit of the receiver against William H. Racey, if there had been among the property situated on those stands, or used in connection therewith, a preserving-apparatus, or freezer for freezing fish, belonging to Joseph H. Racey, jr., or William H. Racey, of a size externally of about seven feet each way—that is in length, width, and height—would you have known of it?

(Objected to.)

360 Ans. If it had been on the stand, I would have seen it; if it had been in the cellar, I would not have seen it.

Int. 44. About how long after you saw the frozen fish in Racey's hand as you have stated was it that he spoke to you about going into his cellar to see his freezer?

(Objected to.)

Ans. To the best of my recollection, within ten days.

Adjourned to May 6, 1869, at 10½ o'clock a. m.

MAY 6, 1869.

Counsel for both parties present.

Examination of Thomas Boesé resumed.

Int. 45. Prior to that, had you any knowledge of any freezer for freezing fish in Racey's cellar or at his stands?

(Objected to upon the grounds heretofore stated.)

Ans. No, sir.

Int. 46. Was Joseph H. Racey, jr., called as a witness in the suit of the receiver against William H. Racey?

(Objected to upon the grounds heretofore stated.)

Ans. I cannot recollect.

Int. 47. Was W'm H. Racey called as a witness in that case?

(Objected to upon the grounds heretofore stated.)

Ans. Yes, my impression is that he was.

Int. 48. About how many witnesses were examined in that suit of the receiver against Racey?

(Objected to upon the grounds heretofore stated.)

Ans. You might say from twelve to twenty.

Int. 49. Are you and have you been acquainted with people who know Joseph H. Racey, jr.? If yea, to what extent?

(Objected to upon the grounds heretofore stated.)

Ans. I have known people who purchased fish at his stand, who, I presume, knew Mr. Racey in his capacity as a seller of fish. I know very little of his acquaintances socially, or who do or have done business with him.

361 Int. 50. Have you heard people speak of the character of Joseph H. Racey, jr., for truth and veracity?

(Objected to upon the grounds heretofore stated.)

Ans. Yes, sir.

Int. 51. Was his truth and veracity involved in the supplementary proceedings you have referred to, or in the suit of the receiver against William H. Racy?

(Objected to as to form, and also for all the reasons previously stated.)

Ans. The counsel for the plaintiff raised a question as to his truth and veracity, and I believe some of the witnesses examined on behalf of the plaintiff. I, acting as counsel for Mr. Racey, denied that there was any just ground to doubt his truth and veracity. The evidence taken in the supplementary proceeding is on record.

Int. 52. Do you know why he was not called as a witness at the trial of the receiver's action against William H. Racey?

(Objected to, upon all the grounds heretofore stated.)

Ans. If he was not called, I presume it was because counsel for the plaintiff probably did not think he would be a good witness for him, and because I did not think it was necessary.

Int. 53. Who prevailed finally in the suit of the receiver against William H. Racey, the plaintiff or the defendant?

(Objected to upon all the grounds heretofore stated.

Ans. The referee found for the plaintiff, [the amount of which was about one-sixth of what was claimed by the plaintiff, and less than the

cost of the reference. I could not state positively as to the finding without referring to the report of the referee. I have not seen it in six or seven years.]

(That portion of the *question* enclosed in brackets is objected to by counsel for complainant as not being responsive or called for by the interrogatory.)

Int. 54. How many times have you heard the character of Joseph H. Racey, jr., for truth and veracity spoken of, and during what period of time?

(Objected to upon all the grounds heretofore stated.)

Ans. I cannot tell the number of times. During the pendency of
362 the suit, and perhaps since then, the counsel for the plaintiff frequently spoke of his character for truth and veracity, and so did some of the witnesses examined on behalf of the plaintiff. I may have heard some of the parties engaged in the same business that he is in the market, his rivals in trade, reflect on him as a man of integrity.

Int. 55. From what you have heard people say, do you know the reputation of Joseph H. Racey, jr., for truth and veracity?

(Objected to as to form, and also for all the reasons heretofore stated.)

Ans. I must answer that in my own way. What was said of his character for truth and veracity during his examination on proceedings supplementary to execution, and the trial of the action of the receiver against William H. Racey, and other proceedings connected therewith, are matters of record, and as to which my position as counsel prohibits me from expressing an opinion. From what I have heard from other sources in reference to matters not connected with the suit, I am not able to say that I know his character for truth and veracity.

Int. 56. How many times since the termination of the suit of the receiver against William H. Racey have you heard the character for truth and veracity of Joseph H. Racey, jr., spoken of?

(Objected to for all the reasons heretofore stated, and also as to form.)

Ans. Probably ten times.

Int. 57. By how many different persons?

(Objected to on all the grounds heretofore stated, and also as to form.)

Ans. By two persons; possibly three or four.

Int. 58. From what you heard people say of the truthfulness and veracity of Joseph H. Racey, jr., prior to the close of the suit of the receiver against William H. Racey, and also since the close of that suit, do you know the general reputation of Joseph H. Racey, jr., for truth and veracity?

(Objected to because the question has already been asked and answered, and because it is not open to a party calling a witness as
363 to truth and veracity to cross-examine that witness, and also for all the reasons heretofore stated.)

Ans. I have already answered that question.

Int. 59. Do you know the general reputation for truth and veracity of Joseph H. Racey, jr., during the pendency of the suit of the receiver against William H. Racey?

(Objected to on all the grounds heretofore stated.)

Ans. I do not know anything of his general reputation for truth and veracity during the pendency of the suit against William H. Racey, with the exception of the evidence given in the proceeding supplementary to execution, and proceedings connected therewith.

Int. 60. Do you know the general reputation for truth and veracity of Joseph H. Racey, jr.?

(Objected to, the question having been already answered, and for all the reasons heretofore stated.)

Ans. I do not. Independent of what knowledge obtained as his counsel, as to which I do not think I should testify, whether favorable or unfavorable.

Int. 61. Including the knowledge obtained by you as his counsel, except confidential communications from him, as client, do you know his general reputation for truth and veracity?

(Objected to for all the reasons heretofore stated.)

Ans. All I know as to his reputation for truth and veracity was obtained in connection with the proceedings supplementary to execution and proceedings connected therewith. The question of his truth and veracity was raised on those proceedings. The plaintiff's counsel impeached, or sought to impeach, Joseph H. Racey, jr.; and after a careful examination of the proceeding I, as his counsel, defended him from that charge. The decision of the court on that question is a matter of record; and I do not think I would be justified, as counsel, in giving an opinion on that subject.

Int. 62. Do you, therefore, decline to answer the question?

(Objected to on all the grounds heretofore stated.)

Ans. I decline to give any other answer than that which I have already made.

364 Int. 63. Have you heard people speak of the character of William H. Racey for truth and veracity?

(Objected to on all the grounds before stated.)

Ans. I have.

Int. 64. During what period of time?

(Objected to on all the grounds before stated.)

Ans. During the pendency of the suit of the receiver against him, and since.

Int. 65. About how many different times?

(Objected to on all the grounds heretofore stated.)

Ans. Altogether, probably, about ten times.

Int. 66. Do you know his general reputation for truth and veracity?

(Objected to on all the grounds heretofore stated.)

Ans. I do not. All that I do know of his reputation for truth and veracity was obtained from the evidence given in said suit, and my communication with him as his counsel.

Int. 67. Do you know his general reputation for truth and veracity during the suit of the receiver against him? If yea, state what it was.

(Objected to on all the grounds heretofore stated.)

Ans. I do not.

Int. 68. Who were the counsel besides yourself in the suit of the receiver against him on either side?

(Objected to on all the grounds heretofore stated.)

Ans. D. S. Riddle was counsel for the plaintiff. I believe I was attorney of record for the defendant, and was assisted by George W. Wingate.

Cross-examination, de bene esse:

Cross-int. 69. Was one of the persons referred to in your answer to the 57th interrogatory D. S. Riddle, the attorney?

Ans. Yes, sir.

THOMAS BOESÉ.

(Adjourned to the 7th inst. at 10 a. m.)

365 FRIDAY, *May* 7, 1869.

Present, counsel for the respective parties.

PETER H. MILLER, recalled as a witness on the part of the complainant, deposes and says:

Int. 1. Have you already testified in this cause?

Ans. I have.

(Counsel for defendant objects to the re-examination of this witness.)

Int. 2. Have you heard people speak of the character for truth and veracity of Joseph H. Racey, jr.?

(Objected to, as being improper in form, and also as calling for matter the introduction of which no foundation has been laid, and as immaterial and irrelevant.)

Ans. I have.

Int. 3. During what period of time?

(Same objection.)

Ans. Well, for a number of years.

Int. 4. Do you know his general reputation for truth and veracity?

Ans. Yes.

Int. 5. State what it is.

Ans. It is generally very bad.

Int. 6. Do you know the general reputation for truth and veracity of W'm H. Racey?

Ans. Yes.

Int. 7. What is it?

Ans. Bad. I would not believe either one of them under oath.

Cross-examined, de bene esse:

Cross-int. 8. During the past year, whom have you heard speak of the reputation of J. H. Racey, jr.?

Ans. I don't know as I have anybody during the past year. I
366 haven't seen either one of them in three or four years but once, and that was Joseph H. Racey, jr., during this examination. I have not heard any one speak of them for the last two years, as I have not been in the way of meeting any of their acquaintances.

Cross-int. 9. Have you at any time during the last four years?

Ans. No, sir; not since I left the market, seven years ago.

Cross-int. 10. Your statement, then, as to having heard people speak of Joseph H. Racey, jr., and William H. Racey, refers to a period some seven years ago, does it?

Ans. Yes, sir.

Cross-int. 11. You were a witness against them in a lawsuit some seven years ago, growing out of the Hardman case, were you not?

Ans. Yes, sir.

Cross-int. 12. Before you left Centre Market your business was that of a fish-dealer, wasn't it?

Ans. Yes, sir.

Cross-int. 13. Beside yourself and Racey, how many were there carrying on that business in Centre Market?

Ans. Sometimes there were as many as fifteen or twenty. When I left there were only three.

Cross-int. 14. When did you leave?

Ans. In December, 1859.

Cross-int. 15. At that time the persons that you heard speak of Racey said he promised to pay money and didn't, wasn't that it?

Ans. Yes.

Cross-int. 16. Were you summoned as a witness in cases against Racey growing out of the Hardman matter, or not?

Ans. Always.

Direct resumed:

Int. 17. Your answer to cross-question 15 is "Yes." Will you please state if they said anything else of Racey? If yea, what?

(Objected to as to form, and also as not open to complainant.)

Ans. They said a great many things of him. They said he was a beat. Many of them said they would not believe him under oath.

367 Cross resumed, de bene:

Cross-int. 18. Will you state who said so?

Ans. It is some time to recollect. Thomas Wood for one, Frederick Johnson for another, and many others, but I can't name them now.

Cross-int. 19. When and what did Thomas Wood say about Racey?

Ans. I heard him many times say that he was a bad man, and would not trust him.

Cross-int. 20. Who was Johnson; what was his business?

Ans. A butcher.

Cross-int. 21. How many years ago did you hear him speak about Racey?

Ans. Nine or ten years ago.

Cross-int. 22. It was about the same time you heard Wood speak of him?

Ans. I have heard Wood speak of him a number of times, but about the same time.

P. H. MILLER.

Deposition of Aaron Hardman, taken, subscribed, and sworn to before R. E. Stilwell, examiner.

MAY 7, 1869.

AARON HARDMAN, called and sworn as a witness on the part of the complainant, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Aaron Hardman; sixty years of age; reside at 104 West Forty-eighth street, New York City, and am a house-agent and in real estate; formerly a builder.

368 Int. 2. Do you know Joseph H. Racey, jr., a fish-dealer in Centre Market, New York City; and, if yea, how long have you known him?

Ans. I know him, and have known him for probably eighteen years, more or less.

Int. 3. Do you know William H. Racey, formerly a fish-dealer in the same market; and, if yea, how long have you known him?

Ans. Yes, I know W'm H. Racey, but have not known him as long as his brother. I don't remember the number of years. Probably from fifteen to twenty years.

Int. 4. Do you know fish-stands Nos. 15 and 17, Centre Market, occupied by Joseph H. Racey, jr., or William H. Racey? If yea, how long have you known them?

(Objected to as to form, and as immaterial and irrelevant, and because no foundation has been laid for the introduction of his testimony.)

Ans. The stands that Joseph Racey occupied, I do not remember

whether those were the numbers or not. But he had stands there, and I built them for him.

Int. 5. Did you have a lawsuit against Joseph H Racey? If yea, about how long ago was it?

(The same objection.)

Ans. I did. I don't remember how long ago it was. I would not have sued him then if he had not lied so much about it. Well, I didn't get my money after getting judgment against him.

(Objected to as not responsive.)

Well, if I had thought he had been an honest man, I would not have sued him.

(The like objection.)

Int. 6. Do you know of a suit brought by James Malcolm against W'm H. Racey; and, if yea, whether you had any interest in it, and about what time it took place?

(Same objection as to the preceding interrogatory.)

Ans. I do. I had an interest in it. I can't tell when it took place without the documents. It was after I sued Joseph Racey.

Int. 7. How long did that suit last?

369 (Same objection.)

Ans. It lasted some time; as near as I can remember, six or nine months.

Int. 8. During the pendency of your suit against Joseph H. Racey, jr., and the suit of Malcolm against W'm H. Racey, what did you do, if anything, as to finding property belonging to Joseph H. Racey, jr.?

(Like objection as before.)

Ans. I looked for the property to levy on, but could not find it. They had it covered up.

Int. 9. Please state particularly where you went and what you did—all about it.

(Same objection above.)

Ans. I directed my attorney to hunt up all the property belonging to Joseph H. Racey, jr., and William H. Racey. I went in the Central Market where the stands were, among his neighbors. I didn't learn anything, or find anything to attach.

Int. 10. State whether or not you found among the property of Joseph H. Racey, jr., or William H. Racey, a preserving-apparatus, or freezer for freezing fish, situated on those stands or used in connection with them.

(Objected to for all the reasons heretofore stated.)

Ans. I know of nothing of that kind at that time. I heard of nothing of the kind.

Int. 11. When did you first know of his having an apparatus for freezing fish?

(Objected to as before.)

Ans. I don't know. I heard last summer that he was using an apparatus for freezing fish. That is all I know about it.

Int. 12. Have you heard people speak of the character for truth and veracity of Joseph H. Racey, jr.?

(Objected to as not the proper form of inquiry, and for all the reasons heretofore stated.)

Ans. Well, I have a conscientious objection to that question as written down.

Int. 13. Will you please answer the question?

(Objection repeated.)

370 Ans. At that time I did.

Int. 14. What time do you refer to?

(Objected to as before.)

Ans. At the time I was making inquiry around the market for the Raceys' property, and during the suit against Joseph H. Racey, jr., and William H. Racey afterwards.

Int. 15. Do you know the general reputation for truth and veracity of Joseph H. Racey, jr.?

Ans. I don't know anything about his reputation at present.

Int. 16. Have you ever known the general reputation for truth and veracity of Joseph H. Racey, jr.? If yea, please state when.

(Objected to as before, and also because the question has been substantially answered in answer to the preceding interrogatory.)

Ans. I have heard people speak of them as being bad men—Joseph Racey, jr., in particular—about the time that suit was going on with Joseph Racey and also William Racey—the Malcolm suit. I know that I would not believe them under oath, either of them, in anything they are interested in.

(Answer objected to as not responsive to the question, and inadmissible as giving the private opinions of the witness.)

Int. 17. I don't understand that you have fully answered the question last put to you. Will you please answer it directly?

(All the objections as heretofore stated.)

Ans. I decline answering that question. I don't know as to other people. I can't be responsible for what they say. I only say that at that time his reputation was bad in my estimation.

(Answer objected to upon the ground stated in objection to previous answers.)

Int. 18. Will you please state, if you know, what the general reputation of Joseph H. Racey, jr., for truth and veracity was at any time within your knowledge?

(Objected to on all the grounds heretofore stated.)

Ans. General reputation includes an extensive field to go over. I think I have answered all that. I cannot answer for the public. I can only answer for myself.

Int. 19. You are not asked to answer for the public, but simply
371 to state, if you know, what the general reputation for truth and veracity of Joseph H. Racey, jr., has been at any time within your knowledge.

(Counsel for the defendant requests the commissioner to instruct the witness that by general reputation, as inquired of, means what the majority of those say who speak of him, and objects to the question on all the grounds heretofore stated.

Counsel for the complainant objects to the instruction being given as requested.)

Ans. They speak of him as a bad man; I have heard some persons say that they would not believe him.

(Answer objected to as not responsive.)

Int. 20. Do you know the general character of W'm H. Racey, jr., for truth and veracity? and, if so, please state what it is.

(Objected to as before.)

Ans. I don't know what it is now.

Int. 21. Do you know what it has been at any time? If yea, please state what it was.

(Objected to as before.)

Ans. Well, I don't know that I do know what his reputation has been.

Int. 22. Have you heard people speak of his character for truth and veracity?

(Objected to as before.)

Ans. I have heard people say they would not believe him.

(Answer objected to as not responsive and as inadmissible.)

Int. 23. From what you have heard people say of his character for truth and veracity, are you able to state what his general reputation for truth and veracity has been; and, if yea, what has it been?

(Objected to for all the reasons stated.)

Ans. I don't know what people say in general about Mr. Racey.

Int. 24. You are not asked to say in general what people say about Mr. Racey, but asked his general reputation for truth and veracity, as indicated by what the people say of his truth and veracity whom you have heard speak upon that subject.

(Objected to for form and for all the reasons heretofore stated.)

Ans. Well, I have heard very few speak on that subject.

372 Int. 25. Question repeated.

(Objected to as before, and also as having been answered by the witness in his answer to the last interrogatory.)

Ans. I don't know his general reputation; in my estimation at the time of the suits it was bad.

(Objected to as not responsive.)

Cross-examined, de bene esse, without waiving any objections heretofore made to any interrogatories-in-chief:

Cross-int. 26. There was a dispute between Mr. Joseph H. Racey and yourself as to the amount of your bill against him, was there not?

Ans. I don't recollect of any now.

Cross-int. 27. Was there not a trial in the case of Hardman against Joseph H. Racey?

Ans. There was.

Cross-int. 28. About how many years ago was that?

Ans. I should suppose it was about ten years ago.

Cross-int. 29. When did you do the work that you have spoken of in building the stands?

Ans. Previous to the suit being commenced against him.

Cross-int 30. By referring to the certified copy of the record which I now show you, does it not appear that it was in 1858?

Ans. It does.

Cross-int. 31. How long before that was it that the work was done; how many years?

Ans. I don't remember distinctly the time, but suppose it was about six months or a year.

Cross-int. 32. Mr. Racey claimed that you charged him too much, didn't he?

Ans. No, sir; he promised to pay the bill from time to time; he may have disputed it after he was sued.

Cross-int. 33. Didn't he?

Ans. I don't remember; it is some time ago.

373 Cross-int. 34. Wasn't one ground of difference between Mr. Racey and yourself as to the payment or non-payment of a certain sum of money, he claiming that he had paid you that sum, and you denying it?

Ans. I don't think there was anything of that kind. He wanted to get rid of the bill altogether.

Cross-int. 35. When you say he lied about it then, you mean that he promised to pay at different times, and didn't do so. Wasn't that it?

Ans. He promised to pay positively at certain times, and didn't do so. He lied about it.

Cross-int. 36. Anything else that you remember? Any other lies before you sued him?

Ans. I have nothing further to say on that at present.

Cross-int. 37. Why won't you answer that question yea or nay?

Ans. I don't remember anything else.

Cross-int. 38. Who was your counsel in the suit of Hardman v. Racey?

Ans. I don't remember.

Cross-int. 39. Did you make any inquiries in regard to Mr. Racey during the year 1862 that you now remember?

Ans. I don't remember just now about inquiries in 1862. I think it very likely I did.

Cross-int. 40. Do you remember any in 1861?

Ans. I haven't charged my mind with any of those things.

Cross-int. 41. If I understand you, then, all that you remember is that about the time you were looking for property on your execution against Racey you made some inquiries in regard to him, mainly as to his pecuniary responsibility.

Ans. Yes.

Cross-int. 42. Since then you have neither inquired nor been in the way of hearing anything about him from those with whom he was dealing or associating?

Ans. No; I haven't troubled myself any further about him.

Cross-int. 43. And the same is true in regard to W'm H. Racey?

Ans. Yes, sir. I have not inquired anything about him. I have not seen him for a number of years.

374 Cross-int. 44. Of whom did you make inquiries in regard to either one of the Raceys, and who did you ever hear speak of their character for truth and veracity?

Ans. I spoke to the people in the market where he was; I don't remember the names. I think I spoke to Mr. Miller for one, and John Connolly also, as to his character for truth and veracity.

Cross-int. 45. When did you speak to Mr. Miller?

Ans. About the time those suits were going on, or immediately after. I don't remember about the time.

Cross-int. 46. John Connolly was a fish-dealer, in Centre Market, wasn't he?

Ans. Yes. I believe he kept an oyster-stand there.

Cross-int. 47. Wasn't his mind affected?

Ans. I never heard that it was.

Cross-int. 48. When did you last hear of him?

Ans. I don't think I have seen him for the last three, four, or five years.

Cross-int. 49. Did you make an arrangement with Mr. Riddle that he should charge you nothing for his services unless he could get it out of the Raceys?

Ans. Why, no, sir. I paid a considerable money for that suit.

Cross-int. 50. Did you get anything out of the judgment or for making an assignment of it?

Ans. No, sir. I got it in this way—I allowed him for his services.

AARON HARDMAN.

375 *Deposition of Nathan Rogers, taken, subscribed, and sworn to before R. E. Stilwell, examiner.*

APRIL 10, 1869.

Present, counsel, as before.

NATHAN ROGERS, called and sworn as a witness on the part of the complainant, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Nathan Rogers; sixty-two years of age; reside at Plainfield, New Jersey, and keep a grocery-store there.

Int. 2. Were you ever in business in New York City? If yea, please state during what time, and what your business was.

Ans. I commenced here in the fish business in Fulton Market in 1832. I was out of the business from 1839 to 1844, and commenced again at same place, and continued there till January 1, 1865.

Int. 3. From 1858 to 1865 were you in business alone, or in company? And if in company, state with whom.

Ans. The partner was Henry Clay Rogers, and the firm-name was N. Rogers & Co.

Int. 4. In what branch of business was your firm during the last-named period?

Ans. Wholesale.

Int. 5. During that period, had you any acquaintance with the fish dealers in New York City, and the fish business in said city? If yea please state to what extent.

(Objected to.)

Ans. I knew all the men that dealt in fish to any extent. I used to see them every day—not all every day—but as a general thing they came to the market nearly every day. I suppose I knew all about fish at that time, and suppose I sold as many fish as any other man at that time.

Int. 6. During that period did you know Joseph H. Racey, jr., a fish-dealer in Centre Market?

376 (Objected to.)

Ans. I don't know what time I first became acquainted with him, but it was 1845 or thereabouts—it may have been later; I couldn't say—and have known him ever since.

Int. 7. During the period last inquired of, from 1858 to 1865, what kinds of fish did your firm deal in?

Ans. All kinds that came to market.

Int. 8. State whether or not, during that period, you dealt in preserved artificially-frozen fish.

Ans. I never had any to sell, but frequently bought salmon and other fish from Middleton, Carman & Co. for people outside.

Int. 9. When did you first know of frozen fish being in the New York market, as inquired of in question 8?

(Objected to.)

Ans. Well, I should think as early as 1858 or 1859, but I have no record to refer to.

Int. 10. Who first had such frozen fish for sale in New York City?

(Objected to.)

Ans. Middleton, Carman & Co. were the first ones at Fulton Market that I know of.

Int. 11. From whom did you purchase artificially-frozen fish from 1858 to 1865?

(Objected to as irrelevant and immaterial, and no foundation laid for the question.)

Ans. Middleton, Carman & Co., formerly W. M. Rogers & Co.

Int. 12. Who else during that period furnished preserved artificially-frozen fish for the New York market?

(Objected to as above.)

Ans. They were furnished to them by some one, I don't know who. I suppose Mr. Piper furnished them.

Int. 13. Who, beside Middleton, Carman & Co., W. M. Rogers & Co., and Mr. Piper, furnished preserved artificially-frozen fish for the New York market during the period inquired of?

(Objected to as above.)

Ans. I don't know of any other. I never heard of anybody else.

377 Int. 14. During said period, if preserved artificially-frozen fish had been furnished in the New York markets by any other fish-dealers, please state whether or not, from your knowledge of the fish-dealers and the fish business generally, you would have known it.

(Objected to, for the reasons before stated, and generally as incompetent.)

Ans. I think I would.

Int. 15. Please state how positive you are about that.

(Objected to for the same reason.)

Ans. I hardly know what answer to make to that. I am positive there never was any such thing; from the way I was situated I should have known it, certain.

Int. 16. During said period did you know of a preserving-apparatus, or freezer for freezing fish, belonging to W. M. Rogers & Co., or their successors, Middleton, Carman & Co.?

(Objected to as above.)

Ans. Yes, sir. I knew of that.

Int. 17. Have you ever seen it? If yea, how many times, and when first?

(Like objection.)

Ans. Well, I have seen it a great many times, and been in it several times. I can't say when first. Soon after it was built Mr. Carman took me in and showed it to me. I can't say when it was built.

Int. 18. Where was it situated?

(Objected to as before.)

Ans. It was situated on Beekman street, between South and Front, in a building on Beekman street.

Int. 19. From 1858 to 1865 had you any knowledge of any other preserving-apparatus, or freezer for freezing fish, in New York City, similar to the one you saw shown you by Mr. Carman?

(Same objection.)

Ans. I never heard of any.

Int. 20. If there had been any other in use by any other fish-dealer in New York City would you have known about it?

(Objected to as before.)

378 Ans. I think I should have known of it.

Int. 21. How positive are you of that?

Ans. I am positive if there had been any such thing I should have known it.

Int. 22. Did your firm trade in fish with Joseph H. Racey, jr., during that period?

(Objected to as before.)

Ans. We often sold him fish.

Int. 23. What was the extent of the business of your firm during that period as compared with other fish-dealers in New York City?

(Objected to as before.)

Ans. It was about an average with the wholesale dealers.

Cross-examined, de bene esse, without waiving any objections to the interrogatories-in-chief:

Cross-int. 24. How often from 1858 to 1865 did you visit Centre Market?

Ans. I visited it occasionally, but could not say how often.

Cross-int. 25. Do you remember to have been there at all during 1865?

Ans. No, sir. I was out of the city.

Cross-int. 26. When, and at what time of the day, during 1864, were you there?

Ans. The fore part of the day, but can't say what days, but at all seasons of the year as a general thing.

Cross-int. 27. Who did you go there to see?

Ans. I have forgotten the man's name.

Cross-int. 28. Did you know all the contrivances for preserving or freezing fish which every retailer in New York had during the period you have been inquired of, the use of which was limited to his own retail business?

Ans. The old ice-box was all I ever heard of.

Cross-int. 29. You have not answered the question. Please do so, yea or nay.

379 Ans. I can't answer it in no other way. I don't presume to be omnipotent or omnipresent.

Cross-int. 30. Can't you say whether or not you know all the various contrivances for preserving or freezing fish which were in use from 1858 to 1865 in New York City?

Ans. The old ice-box was the way to preserve them in, and the freezer that W. M. Rogers & Co., or Middleton, Carman & Co., had was the only one I ever heard of during that time.

Cross-int. 31. Did you have an ice-box which you used?

Ans. I did not.

Cross-int. 32. How many ice-boxes did you ever see in Fulton Market the inside of which you ever examined?

Ans. I would like a man to frame an answer to that. I don't want to tell an untruth. I don't know; I have seen a good many, quite a good many.

Cross-int. 33. Where have you examined the inside of ice-boxes? Whose were they?

Ans. Fulton Market, more or less. Carman's I have seen a great many times, and quite a good many others. John Arcularius and many others.

Cross int. 34. What kind of one did John Arcularius have?

Ans. The same old patent we had when we were boys.

Cross-int. 35. Did you ever see Robbins'? I refer to the one in his store-house.

Ans. I never saw it.

Cross-int. 36. Did you ever hear of it before?

Ans. I may have heard and forgot.

Cross-int. 37. Do you remember ever to have heard of Robbins' ice-box or freezer, which they had in their store-house, before to-day?

Ans. I have no recollection.

Cross-int. 38. If you had heard or known that the Robbins had freezing-apparatus capable of freezing fish, game, would you have been likely to forget it?

Ans. I don't think they had any before 1865.

Cross-int. 39. Do you feel quite positive they didn't?

380 Ans. I am quite positive, for if they had I think I should have heard of it.

Cross-int. 40. You mean to say, do you, that you never knew or heard in any way that the Robbins ever had an apparatus for freezing prior to 1865?

Ans. I think I have answered that before. I knew of their having an old ice-box; I never knew of their having a freezer, and I never heard of it.

Cross-int. 41. You would be very much surprised, would you not, to learn that as early as 1859 or 1860, that the Robbins had an apparatus for freezing, in their store-house, capable of freezing fish and other animal substances?

Ans. I don't know how much surprised I should have been. They might have had a dozen or they might not have had any.

Cross-int. 42. Didn't Mr. Carman once say to you, when speaking about the freezer, that Mr. Piper talked about suing the Robbins for having a freezer in their store-house?

(Objected to as being hearsay and no foundation having been laid for the inquiry.)

Ans. I think not.

Cross-int. 43. Are you positive about it?

Ans. I am positive as I can be of anything.

Cross-int. 44. Is Henry Clay Rogers now in business; and, if so, where, and with whom?

Ans. He is in Fulton Market, with Thomas Rogers.

Cross-int. 45. Is either one of that firm connected with you in any way?

Ans. H. C. Rogers is my nephew, and I am a blood-relation of Thomas Rogers, but it is a good ways off, but am not connected in any other way.

Cross-int. 46. Are you interested with them in any personal property of any kind, vessels, or anything of that kind?

Ans. Yes; we own in the same vessels, but his interest is separate from mine. Henry and I own an interest in a schooner and a ship, each having separate papers. He owns a sixteenth and I own the same, but there is no connection between us.

381 Cross-int. 74. How many fishing-vessels do you own together?

Ans. Not any.

Cross-int. 48. Did you ever examine any refrigerators or ice-boxes in Centre Market?

Ans. Mr. Racey showed me his once, and also his fish he had stowed away.

Cross-int. 49. When was that?

Ans. Well, I can't say when, but I think between the years 1858 and 1865.

Cross-int. 50. Where was it; what part of the market?

Ans. I think in the back part of his stand.

Cross-int. 51. Could any one have had any contrivance for freezing fish for his own use, from 1858 to 1865, in New York City, without your knowing it?

Ans. I think if any one in the fish-business had had such a thing I should have known it.

Cross-int. 52. Would you have known it unless a person told you?

Ans. You wouldn't hardly suppose I would have known it unless some one had told me or I had run over it.

Cross-int. 53. Now, do you think it possible for any one to have artificially frozen fish in New York City without your knowing it?

Ans. Well, I should hardly think there could be.

Cross-int. 54. So you believe that your knowledge extended to all the transactions of fish-dealers, whether large or small, in New York City, do you?

Ans. I do, in the way of freezing fish.

Cross-int. 55. So no dealer in New York City could possibly have frozen fish artificially, no matter how sold, or used without your knowledge?

Ans. I don't think they could, unless by that patent freezer.

Cross-int. 56. If he had done it by that freezer, would you have known it?

Ans. I think I would.

Cross-int. 57. If any dealer in New York, during the period in
382 which you have been inquired about, had frozen a few fish, artificially, as an experiment, and sold them from his stand, after they had been thawed, you have no doubt you would have known it, have you?

Ans. I have known of such things.

Cross-int. 58. Do you believe it could have been done in New City without your knowledge?

Ans. I have seen the thing done, and it very likely may have been done when I did not see it.

Cross-int. 59. Do you believe it could have been done by anybody but Middleton, Carman & Co. without your knowledge?

Ans. No, sir.

Cross-int. 60. Won't you tell me how many retail fish-dealers there were in New York City in 1860?

Ans. No, sir; I could not tell you without taking me a week or so.

Cross-int. 61. Could you ever have told?

Ans. I think I have known all the men that dealt in fish at retail at that time except some two-penny ones. There may have been some around the corners that I didn't know.

Cross-int. 62. About how many were there?

Ans. Who can tell?

Cross-int. 63. You can tell as well as I can.

Ans. I suppose I have sold fish to all of them, or nearly so, but the number I cannot tell.

Cross-int. 64. How many were there from 1858 to 1864, inclusive, in Centre Market?

Ans. Well, there was from two to ten.

Cross-int. 65. How many were there in 1860?

Ans. From two to six, I think, that year.

Cross-int. 66. Which was it, two or six?

Ans. I think it was over two and not more than six.

Cross-int. 67. Who were they?

Ans. I can't remember their names. Joe Racey, I remember him very well, but I don't remember the names of others.

383 Direct resumed:

Int. 68. In cross-interrogatory No. 37, and subsequent cross-

interrogatories to No. 43, inclusive, a preserving-apparatus or freezer belonging to the Robbins is referred to. Will you please state what kind of a preserving-apparatus or freezer did you understand was referred to in those questions?

(Objected to on the ground that the questions referred to sufficiently indicate the kind of freezer, namely, a freezer capable of freezing fish or other animal substances. No foundation has, therefore, been laid for this question on this cross-examination.)

Ans. There was such a thing insinuated as their having a freezer here, but never to my knowledge before. And if they had one, they never froze anything in it. I understood them to refer to one like Carman's.

Cross resumed:

Cross-int. 69. Did you ever hear, or know, before to-day that the Robbins ever had any kind of apparatus capable of freezing fish or other animal substances?

Ans. I never knew or heard of their freezing fish or other animal substances before to-day.

NATHAN ROGERS.

(Adjourned to 10 a. m., the 8th inst.)

Deposition of Gilson Carman, taken, subscribed, and sworn to before R. E. Stilwell, examiner.

SATURDAY, *May* 8, 1869.

Present, counsel on both sides.

GILSON CARMAN, recalled as a witness on the part of the complainant, deposes and says:

(Counsel for defendant objects to this witness being recalled, he having once testified, and not being called to rebut any matter put in by the defendant since his last examination.)

Int. 1. Have you testified before in this case?

Ans. I have.

384 Int. 2. Have you been subpœnaed to attend to-day as a witness; and, if yea, when?

Ans. I have been to-day, at 11 o'clock.

Int. 3. Do you remember the condition of frozen salmon purchased by your firm of Mr. Piper in the years 1864 and 1865? If yea, please state what their condition was.

(Objected to as immaterial, irrelevant, and also because the subject has been once gone into with this witness.)

Ans. I do remember the condition. It was bright, having natural appearance.

Int. 4. What is the difference in the appearance of frozen salmon in good condition and frozen salmon in bad condition?

(The like objection.)

Ans. In good condition it is bright, of a silvery appearance, and looked more like freshly-caught salmon; and when in bad condition, they have a rusty appearance, and look bad generally. I mean by rusty appearance a kind of a reddish color.

Int. 5. Have you heard people who know him speak of the character of Joseph H. Racey, jr., as to his truthfulness and veracity?

(Objected to on the ground that the question is not proper in form, and relates to a matter not open to the party calling the witness.)

Ans. I have.

Int. 6. Do you know the general reputation for truth and veracity of Joseph H. Racey, jr.?

Ans. I do.

Int. 7. Will you please state what it is?

Ans. It is bad wherever he is interested.

Int. 8. Has your firm been receiving artificially-frozen salmon from Mr. Piper during the past two months? If yea, please state particularly their condition when received.

(Objected to on all the grounds stated before.)

Ans. We have been receiving frozen salmon the last two months, and the greater part of them came in bad condition, having a rusty appearance.

385 Cross-examination de bene esse, waiving no objections taken to any of the interrogatories-in-chief:

Cross-int. 9. Who have you heard speak of the general reputation of Joseph H. Racey prior to his connection with this suit, and during three years past?

Ans. I can't tell of any particular ones.

Cross-int. 10. Have you heard any one before his connection with this suit during the period inquired of?

Ans. I have heard it, but can't tell from whom.

Cross-int. 11. When did you hear anything said about him during the period inquired of?

Ans. I have no data.

Cross-int. 12. You can't tell who nor when, can you?

Ans. No, sir, only from the general impression of others from whom I have heard anything with reference to his character; it was that it was not very good.

Cross-int. 13. Will you swear, as a matter of memory, that you have heard any one with whom he dealt or associated prior to his testifying in this suit speak of his character for truth and veracity since 1864?

Ans. I think I have several, which give me the general impression I have.

Cross-int. 14. Who were they?

Ans. I couldn't name any particular one.

Cross-int. 15. If you don't remember who they were, how do you know they were persons with whom he dealt or associated?

Ans. I don't know. I can't tell all the persons he associated with or dealt with.

Cross-int. 16. That wasn't the question. Please answer the question as put.

Ans. All I know is from the general impression of others.

Cross-int. 17. Then you don't know as matter of fact whether those who spoke of him dealt or associated with him, do you?

Ans. No, sir.

386 Cross-int. 18. As simple matter of memory, how many persons other than those connected with your firm have you heard speak of his general reputation for truth and veracity from 1864 until he became a witness in this case?

Ans. I could not tell how many.

Cross-int. 19. Will you swear that you have any?

Ans. I have heard it, but I could not tell how many, nor who they were, nor when.

Cross-int. 20. You have said that his reputation was bad where he was

interested. Was there anything said as to his reputation for truth and veracity where he was disinterested?

Ans. I don't remember anything more than that his reputation was bad for truth and veracity—an impression I have got from others. I don't know that there was anything said as to his reputation for truth and veracity where he was disinterested.

GILSON CARMAN.

Deposition of William H. Middleton, taken, subscribed, and sworn to before R. E. Stilwell, examiner.

WILLIAM H. MIDDLETON, recalled on the part of the complainant, deposes and says:

(Counsel for defendants objects to the examination of this witness on the ground that he has already been examined, and that no testimony has been introduced by the defendants since his previous examination.)

Int. 1. Have you been subpœnaed to attend as a witness in this case to-day; and, if so, when?

Ans. I have; this morning.

Int. 2. Have you heard people who knew him speak of the character for truth and veracity of Joseph H. Racey, jr.?

(Objected to as not proper in form.)

Ans. I have.

Int. 3. Do you know the general reputation for truth and veracity of Joseph H. Racey, jr.?

Ans. I do.

Int. 4. Please state what it is.

Ans. It was bad.

387 Cross-examined de bene esse, waiving no objection taken to the examination-in-chief:

Cross-int. 5. Prior to Joseph H. Racey testifying in this case, whom have you heard speak of his general character for truth and veracity since 1864, other than those connected with your firm or in your employ?

Ans. I can't mention particularly, only general reputation amongst those who knew him.

Cross-int. 6. If you don't know who has spoken of him as last inquired of, how are you enabled to say they knew him?

Ans. I didn't charge my mind with it at the time; that was his reputation among men in the same business; I have heard fifty men speak of him.

Cross-int. 7. When was it his reputation?

Ans. Ever since I have known him.

Cross-int. 8. When did you hear any one speak of it?

Ans. I can't state any particular time nor any particular man.

Cross-int. 9. Can you tell last when you heard any one speak of him prior to his connection with this suit as a witness?

Ans. I cannot.

Cross-int. 10. You have talked with your partners about him, haven't you?

Ans. I don't know that I have, unless his name has been mentioned, or something of that kind.

Cross-int. 11. Do you remember whether you have or not?

Ans. We may have spoke about him together, but we never sat down to have a regular talk about him, if that is what you mean.

Cross-int. 12. That is not what I mean. My question was, whether you have talked with your partners about him.

Ans. Nothing more than casually mentioning his name, the same as any one else in the same business.

Cross-int. 13. Did they ever say to you that his reputation for truth and veracity was bad until to-day?

Ans. I don't know that they ever did.

Cross-int. 14. What occasion had you, if any, during 1866 and
388 1867, to inquire about or learn the general reputation of Racey for truth and veracity?

Ans. No more than I would of any man who was in the same business.

Cross-int. 15. Will you state, as matter of memory, that you heard any one speak, during those two years, of his general reputation for truth and veracity?

Ans. No, sir.

Cross-int. 16. Can you so state with reference to the years 1864 and 1865?

Ans. I can't from memory particularize any time; I can only say that that was his general reputation.

Cross-int. 17. If you don't remember to have heard any one who dealt or associated with him speak of his character for truth and veracity whom you can now remember, how do you know what his general reputation is?

Ans. The same way that you would know what the general reputation of anybody was from hearing it every day and every year.

Cross-int. 18. Did you hear it spoken of yesterday?

Ans. I did.

Cross-int. 19. By whom?

Ans. By Mr. Piper; I mean he asked me about it.

Cross-int. 20. Did you the day before?

Ans. I think not.

Cross-int. 21. Do you remember any other day that you did?

Ans. I do not.

Cross-int. 22. Or any other year?

Ans. I do not.

Cross-int. 23. Or any other person?

Ans. I do not.

WILLIAM H. MIDDLETON.

(Adjourned to the 18th inst., at 11 a. m.)

389 EXHIBIT NO. 1.—R. E. S., EXAMINER, APRIL 30, 1869.

NEW YORK COMMON PLEAS,
City and County of New York, ss:

AARON HARDMAN }
vs.
JOSEPH H. RACEY. }

Affidavit and order for examination of judgment-debtor, filed 26 Jan., 1860.

D. S. RIDDLE,
Attorney for Plaintiff.

Affidavit and order of judgment-debtor to make discovery after return of an execution unsatisfied.

Aaron Hardman, being duly sworn, says that he is the above-named plaintiff; that judgment was recovered in this action against the above-named defendant, Joseph H. Racey, in the court of common pleas on the 29th day of November, one thousand eight hundred and fifty-eight, for the sum of $478.73, and duly filed and docketed with the clerk of said court; that a transcript of said judgment was on the same day filed in the office of the clerk of the city and county of New York; and that an execution upon the said judgment against the property of the said judgment-debtor was, on the 29th day of November, 1858, duly issued to the sheriff of the city and county of New York; that the judgment-debtor resided in said county at the time of issuing such execution, and still so resides; and that the said sheriff has returned the said execution wholly unsatisfied.

AARON HARDMAN.

Sworn to before me this 7th day of Oct., 1859.

A. M. ENGLEM,
Com'r of Deeds.

390 N. Y. common pleas.

AARON HARDMAN }
vs.
JOSEPH H. RACEY. }

Order for judgment-debtor to make discovery after return of an execution unsatisfied.

It appearing to me by the affidavit of Aaron Hardman, the plaintiff, that an execution upon the judgment in the above-entitled action against the property of Joseph H. Racey, the defendant therein, has been duly issued to the sheriff of the proper county and returned wholly unsatisfied, I do hereby require the above-named Joseph H. Racey to appear before me, at chambers, to be held in the city-hall of the city and county of New York, on the seventeenth day of October, one thousand eight hundred and fifty-nine, at 10 o'clock in the forenoon, to make discovery on oath concerning his property, and to abide and perform such further or other order as may be made by me in the premises; and in the mean time, and until the further order to the contrary, the said Joseph H. Racey is hereby enjoined and restrained from making any transfer or other disposition of his property not exempt by law from execution, or from any interference therewith.

Dated October 7th, 1859.

JNO. R. BRADY, *J. C. P.*

(Indorsed on the above:)

CITY AND COUNTY OF NEW YORK, *ss:*

Daniel S. Riddle, being duly sworn, says he did, on the 14th day of October, 1859, at the city of New York, at Centre-st. Market in said city, serve the within original order and copy of the within affidavit on Joseph H. Racey, known to him to be the defendant within named, by delivering to, and leaving with him personally the said copy of affidavit, and a copy of the said order, and at the same time showing to him the within original order.

D. S. RIDDLE.

Sworn this day of October, 1859, before me.

391 Examination of def't concluded. Further examination adjourned to 26th inst., 10 a. m.
Dated Oct. 17th, 1859. J. R. B., J. C. P.

Oct. 26th, 1859. Within examination adjourned to 28th inst., 10 a. m., def't not appearing. C. W.

Further examination adjourned to 3d of Nov., 1859, 11 a. m.
Dated Oct. 28, 1859.

W'M. H. RACEY.

Adjourned as above. J. H. B., J. C. P.

Further examination in the above cause adjourned to 9th Nov., 1859, 10 a. m.
Dated at N. Y., Nov. 3, 1859. C. W.

Further examination in the within cause adjourned to the 11th inst., 10 a. m., def't not appearing.
Dated N. Y., Nov. 9, 1859. C. W.

Examination herein adjourned to 25th inst., 10 a. m.
Dated Nov. 11, 1859. H. H.
Dated 18 Nov., 1859. H. H.

Further examination in the within-entitled action is hereby adjourned by consent to the 5th day of January, 1860, at 11 o'clock a. m.
Dated Dec. 28, 1859.

THO'S BOESÉ,
Attorney for Def't.

392 EXHIBIT No. 2.—R. E. S., EXAMINER, APRIL 30, 1869.

New York common pleas, special term, January 26, 1860.

AARON HARDMAN }
vs. }
JOSEPH H. RACEY. }

Present, Hon. Charles P. Daly, judge.

On reading the report of Richard S. Cumming, esq., referee herein, bearing date the thirteenth day of January, 1860, made pursuant to an order of this court in the above matter, bearing date the fifth day of January, 1860, whereby it was, among other things, referred to said referee to examine and ascertain who is a suitable person to be appointed such receiver of the property and effects of said defendant, and to collect, sue for, and recover the debts and demands that may be due, and the property that may belong to such defendant, with the usual powers, liabilities, and rights of a receiver.

And it is further ordered that he report the names of the sureties who may be proposed for the said receiver, and as to the fitness and sufficiency of the said proposed sureties to give bond with the person who may be appointed receiver as aforesaid in the sum of one thousand dollars, by which report it appears that the said referee had been attended by counsel touching the matters so referred in and by said order, and that James Malcolm, of the city of New York, was proposed by the complainant, and that he is a fit and proper person for such a

receiver, and that Aaron Hardman, of the city of New York, and George L. Osborn, of Westchester County, are offered as sureties for the faithful discharge of his trust as receiver, and that they are and each
393 of them is of sufficient ability and fully competent to become such sureties in the sum of one thousand dollars.

Now, on reading and filing the said report of said referees, and on motion of D. S. Riddle, of counsel for the plaintiff, I do hereby order that James Malcolm, of the city of New York, be, and he is hereby, appointed a receiver of the property of the said defendant, Joseph H. Racey; but such receiver, before entering upon the execution of his duties, shall execute to the people of the State of New York a bond, with the above-named persons as sureties, to be by me approved, in the penalty of one thousand dollars, conditioned (in proper and sufficient words) to perform his duties as such receiver; and that the said James Malcolm, on filing such bond in the office of the clerk of the court of common pleas, be, by force of the said order and the said bond, vested with the property of the said defendant, and invested with all the rights and powers as receiver according to law.

That, when so appointed, the said receiver shall have power to sue for and collect all debts, demands, and rents belonging to the said defendant, and to compromise and settle such as are unsafe or of a doubtful character. He may sue in the name of the debtor where it is necessary or proper for him to do so; but the said receiver will not in his accounts be allowed for the costs of any action brought by him against any insolvent from whom he is unable to collect his costs, unless such action is brought by order of the court, or by the consent of all persons interested in the funds in his hands. And the tenants of the real estate of the said defendant are to attorn to such receiver, or the latter may, when necessary, apply for and obtain an order that any of such tenants attorn and pay rents to him.

And such receiver may make leases from time to time, as may be necessary, for a time not exceeding one year. And it is hereby made the duty of said receiver, without unreasonable delay, to convert the property of said defendant into money; but he is not to sell any real estate without special order, although he may sell desperate debts and doubtful claims to personal property, at public auction, giving at least ten days' public notice of the time and place of such sale. And I also order that the sum of $15.00 be allowed to the plaintiff for costs of
394 this proceeding, and that the said defendant, Joseph H. Racey, be, and he hereby is, enjoined and restrained from making any disposition of, or interfering with, his property until further order.

A copy.

NATH'L JARVIS, JR., *Clerk.*

(Endorsed on above:) Thursday next, 31st, at one o'clock. Racey *v.* Racey. Cert. co. order ap't'g rec'r.

395 WINGATE'S EXHIBIT No. 1.—R. E. S., EXAMINER.

[U. S. inter. revenue stamp, fifty cents, cancelled.]

To all to whom these presents shall come: Know ye that I, Joseph H. Racey, senior, of the city of New York, of the first part, for securing the payment of the money hereinafter mentioned, and in consideration of the sum of one dollar to me duly paid by George W. Wingate, of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and

sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, the horse, cart, and harness, and also the marble slab, locker, fixtures, clock, and all other goods and chattels mentioned in the schedule hereunto annexed, and now in the stands numbers 15 and 17, Centre Market, in said city, to have and to hold all and singular the goods and chattels above bargained and sold, or intended so to be, unto the said party of the second part, his executors, administrators, and assigns, forever. And I, the said party of the first part, for myself, my heirs, executors, and administrators, all and singular the said goods and chattels above bargained and sold unto the said party of the second part, his heirs, executors, administrators, and assigns, against the said party of the first part, and against all and every person or persons whomsoever, shall and will warrant and forever defend. Upon condition that if I, the said party of the first part, shall and do well and truly pay unto the said party of the second part, his executors, administrators, or assigns three certain notes, for the sum of fifty dollars each, dated the twenty-first day of January, 1863, made by me, and payable in one, three, and five months respectively from the date thereof, at the times they shall respectively mature, then these presents shall be void, but if any of the said notes shall remain unpaid after the maturity thereof, then the
396 whole principal sum of one hundred and fifty dollars secured hereby shall become due and payable, and this mortgage shall have full force and effect as a security for said amount. And I, the said party of the first part, for myself, my executors, administrators, and assigns, do covenant and agree, to and with the said party of the second part, his executors, administrators, and assigns, that in case default shall be made in the payment of the said sum above mentioned, then it shall and may be lawful for, and I, the said party of the first part, do hereby authorize and empower, the said party of the second part, his executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter my dwelling-house, store, and other premises, and such other place or places as the said goods or chattels are or may be placed, and take and carry away the said goods or chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto me, or to my executors, administrators, or assigns. And until default be made in the payment of the said notes, or any of them, the said party of the first part is to remain and continue in the quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same.

In witness whereof I, the said party of the first part, have hereunto set my hand and seal the twenty-first day of January, one thousand eight hundred and sixty-three.

JOSEPH H. RACEY, SR. [L. S.]

Sealed and delivered in the presence of—
EDWARD C. BAKER.

Schedule mentioned in the foregoing mortgage.

At stable in Delancey street:
1 horse.
1 cart.
1 set of harness.
At stands 15 and 17, Centre Market:
1 locker with white marble slab.

397 1 ice-box.
1 lot fish-tools, knives, etc.
1 stove.
1 desk.
1 partition, looking-glass, etc.
1 stool, gas-fixtures, etc.
1 clock.

In consideration of the sum of one hundred and twenty-seven $\frac{50}{100}$ dollars to me in hand paid by George Moon, of the city of New York, the receipt whereof is hereby acknowledged, I do hereby assign and set over unto said Moon the within mortgage, and all my right, title, and interest thereto or in the goods and chattels mentioned in the schedule annexed thereto, and in the notes described in said mortgage, which I now have by means of the said indenture or otherwise. And I do hereby constitute the said George Moon my attorney irrevocable, with full power in my name or otherwise, but at his own costs and charges, to have and use all lawful ways for the recovery of the said money and interest. In witness whereof I have set my hand and seal this twenty-first day of January, 1863.

Witness :

GEORGE W. WINGATE. [L. S.]

EDWARD C. BAKER.

OFFICE OF THE REGISTER OF DEEDS, ETC.,
City and County of New York, ss :

I have compared the annexed copy with an instrument filed in this office on the 21st day of January, A. D. 1863, at 2 o'clock 50 min. p. m. by the No. 264, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 10th day of April, 1869.

[L. S.] MICHAEL CONNOLLY,
Register.

398 (Endorsed on above :) No. 264. Mortgage on personal property. Joseph H. Racey to George W. Wingate. Dated ——— 18, filed January 21, 1863, at 2.50. L. H. Watts, dep. reg. This mortgage, or a true copy thereof, must be filed—if in the city of New York, in the office of the register ; if in any other city or county-town, in the clerk's office therein ; if in any other town in this State, in the town-clerk's office. It becomes void if not renewed before the expiration of the year.

399 WINGATE'S EXHIBIT No. 2.—R. E. S., EXAMINER.

To all to whom these presents shall come :

Know ye, that I, William H. Racey, of the city of New York, party of the first part, for securing the payment of the money hereinafter mentioned, and in consideration of the sum of one dollar to me duly paid by George Moon, also of said city, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, and sell unto the said party of the second part, the stands, scales, tools, safe, and fixtures appertaining to the stands 15 and 17 Cen-

tre Market, and all other goods and chattels mentioned in the schedule hereunto annexed, and now in the Centre Market, in the said city of New York; to have and to hold all and singular the goods and chattels above bargained and sold, or intended so to be, unto the said party of the second part, his executors, administrators, and assigns, forever. And the said party of the first part, for himself, his heirs, executors, and administrators, all and singular the said goods and chattels above bargained and sold, unto the said party of the second part, his heirs, executors, administrators, and assigns, against William H. Racey, the said party of the first part, and against all and every person or persons whomsoever, shall and will warrant, and forever defend. Upon condition, that if he, the said party of the first part, shall and do well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of one hundred dollars, lawful money of the United States, with the interest thereon from the date hereof, on the thirteenth day of March, one thousand eight hundred and sixty-two, then these presents shall be void. And I, the said party of the first part, for my-
400 self, my heirs, executors, administrators, and assigns, do covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, that in case default shall be made in the payment of the said sum above mentioned, then it shall and may be lawful for, and I, the said party of the first part, do hereby authorize and empower the said party of the second part, his executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter my dwelling-house, store, and other premises, and such other place or places as the said goods or chattels are or may be placed, and take and carry away the said goods or chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto me or to my executors, administrators, or assigns. And until default be made in the payment of the said sum of money, the said William H. Racey is to remain and continue in the quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same.

In witness whereof, I, the said party of the first part, have hereunto set my hand and seal the thirteenth day of March, one thousand eight hundred and sixty-one.

WILLIAM H. RACEY. [L. S.]

Sealed and delivered in the presence of—

Schedule mentioned in the foregoing mortgage.

2 marble-topped fish-stands, with the drawers and lockers appertaining thereto;
2 scales;
1 safe;
2 ice-boxes;
Fish-tools;
Office-furniture;
and all other fixtures connected with and now on the fish-stands numbers 15 and 17 in Centre Market aforesaid.

401 OFFICE OF THE REGISTER OF DEEDS, ETC.,
City and County of New York, ss:

I have compared the annexed copy with an instrument filed in this office on the 31st day of July, A. D. 1861, at 2 o'clock 40 minutes p. m.,

by the No. 10,675, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereto subscribed my name and affixed my official seal this 10th day of April, 1869.

[SEAL.] MICH'L CONNOLLY,
Register.

(Endorsed on above:) No. 10,675. Mortgage on personal property. William H. Racey to George Moon. Dated March 13, 1861; filed July 31, 1861, at 2.40; $100.00. L. H. Watts, dep. reg. This mortgage, or a true copy thereof, must be filed—if in the city of New York, in the office of the register; if in any other city or county-town, in the clerk's office therein; if in any other town in this State, in the town-clerk's office. It becomes void if not renewed before the expiration of the year.

402 VULTEE'S EXHIBIT.—R. E. S., EXAMINER, APRIL 9, 1869.

Sales at auction January 20, 1863, at stands Nos. 15 and 17 Centre Market, by virtue of a chattel-mortgage, by order of

LOUIS H. VULTEE,
Att'y for Mortgagee.

2 fish-stands, with marble slabs		$10 00
1 ice-box		50
Lot fish-tools, knives, etc		50
1 store-desk, stool, partition, looking-glass, stove, &c., gas-fixtures, etc		10 00
1 horse, cart, and harness		106 00
		$127 00
CHARGES.		
Commissions	$8 35	
Advertising	1 50	9 85
		$117 15
Keeping horse	$3 00	
Foreclosing mortgage	10 00	13 00
		$104 15

403 VULTEE'S EXHIBIT.—R. E. S., EXAMINER, APRIL 9, 1869.

To all to whom these presents shall come:

Know ye, that I, William H. Racey, of the city of New York, party of the first part, for securing the payment of the money hereinafter mentioned, in consideration of the sum of one dollar to me duly paid by George Moon, also of said city, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, the stands, scales, tools, safe, and fixtures appertaining to the stands 15 and 17, Centre Market, and all other goods and chattels mentioned in the schedule hereunto annexed, and now in Centre Market, in said city of New York.

To have and to hold all and singular the goods and chattels above bargained and sold, or intended so to be, unto the said party of the

second part, his executors, administrators, and assigns, forever. And the said party of the first part, for himself, his heirs, executors, and administrators, all and singular of the said goods and chattels above bargained and sold, unto the said party of the second part, his heirs, exetutors, administrators, and assigns, against William H. Racey, the said party of the first part, and against all and every person or persons whomsoever, shall and will warrant and forever defend.

Upon condition, that if he, the said party of the first part, shall and do well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of one hundred dollars, lawful money of the United States, with interest thereon from the date hereof, on the thirteenth day of March, 1862, then these presents shall be void. And I, the said party of the first part, for myself, my heirs, executors, administrators, and assigns, do covenant and agree,
to and with the said party of the second part, his executors,
404 administrators, and assigns, that in case default shall be made in
the payment of the said sum above mentioned, then it shall and may be lawful for, and I, the said party of the first part, do hereby authorize and empower, the said party of the second part, his executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter my dwelling-house, store, and other premises, and such other place or places as the said goods or chattels are or may be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom to retain and pay the said sum above mentioned and all charges touching the same, rendering the overplus (if any) unto me, or to my executors, administrators, or assigns. And until default be made in the payment of the said sum of money the said William H. Racey is to remain and continue in the quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same.

In witness whereof I, the said party of the first part, have hereunto set my hand and seal the thirteenth day of March, one thousand eight hundred and sixty-one.

WILLIAM H. RACEY. [L. S.]

Sealed and delivered in the presence of—

Sehedule mentioned in the foregoing mortgage:

2 marble-topped fish-stands, with the drawers and lockers appertaining thereto.
2 scales.
1 safe.
2 ice-boxes.
Fish-tools.
Office-furniture,
and all other fixtures connected with and now in the fish-stands numbers 15 and 17, in Centre Market aforesaid.

405 I hereby deputize Lewis H. Vultee to foreclose the preceding mortgage.

Dated N. Y., January 17, 1863.

GEORGE W. WINGATE,
Attorney for Mortgagee.

NEW YORK, *January 21st*, 1863.

Received from Louis H. Vultee the sum of twenty-six and $\frac{7}{100}$ dollars, being net proceeds on account of sales on the within mortgage.

$26 $\frac{7}{100}$. GEORGE W. WINGATE,
Attorney for Mortgagee.

(Endorsed on above:) W'm H. Racey to George Moon. Dated March 13, 1861. Filed, , 18 . Mortgage, $100.00. G. W. Wingate, att'y for mortgagee. This mortgage, or a true copy thereof, must be filed—if in the city of New York, in the office of the register; if in any other city or county-town, in the clerk's office therein; if in any other town in this State, in the town-clerk's office. It becomes void if not renewed before the expiration of the year.

406 VULTEE'S EXHIBIT.—R. E. S., EXAMINER, APRIL 9, 1869.

To all to whom these presents shall come:

Know ye, that I, William H. Racey, of the city of New York, party of the first part, for securing the payment of the money hereinafter mentioned, in consideration of the sum of one dollar to me duly paid by George Moon, also of said city, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, my bay horse, cart, and harness, and all other goods and chattels mentioned in the schedule hereunto annexed and now in my possession in said city.

To have and to hold all and singular the goods and chattels above bargained and sold, or intended so to be, unto the said party of the second part, his executors, administrators, and assigns, forever. And the said party of the first part, for himself, his heirs, executors, and administrators, all and singular of the said goods and chattels above bargained and sold unto the said party of the second part, his heirs, executors, administrators, and assigns, against William H. Racey, the said party of the first part, and against all and every person or persons whomsoever, shall and will warrant and forever defend.

Upon condition and if he, the said party of the first part, shall and do well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the just and full sum of one hundred dollars, lawful money of the United States, on the fifteenth day of May, one thousand eight hundred and sixty-one, then these presents shall be void. And I, the said party of the first party, for myself, my heirs, executors, administrators, and assigns, do covenant and agree, to and with the said party of the second part, his executors and ad-
407 ministrators and assigns, that in case default shall be made in the payment of the said sum above mentioned, then it shall and may be lawful for, and I, the said party of the first part, do hereby authorize and empower, the said party of the second part, his executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter my dwelling-house, store, and other premises, and such other place or places as the said goods or chattels are or may be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom to retain and pay the said sum above mentioned and all charges touching the same, rendering the overplus (if

any) unto me, or to my executors, administrators, or assigns. And until default be made in the payment of the said sum of money the said William H. Racey is to remain and continue in the quiet and peaceable possession of the said goods and chattels and the full and free enjoyment of the same.

In witness whereof I, the said party of the first part, have hereunto set my hand and seal the thirteenth day of March, one thousand eight hundred and sixty-one.

WILLIAM H. RACEY, [L. S.]

Sealed and delivered in the presence of—

Schedule mentioned in the foregoing mortgage:

1 bay horse.
1 cart.
1 set of harness.

I hereby deputize Lewis H. Vultee to foreclose the preceding mortgage. Dated N. Y., January 17, 1863.

GEORGE W. WINGATE,
Attorney for Mortgagee.

408 NEW YORK, *January 21st*, 1863.

Received from Louis H. Vultee the sum of seventy-eight $\frac{8}{100}$ dollars, being net proceeds on $\frac{a}{c}$ of sales on the within mortgage.

GEORGE W. WINGATE,
Attorney for Mortgagee.

$78\frac{8}{100}$.

(Endorsed on above:) William H. Racey to George Moon. Dated March 13, 1861. Filed 18. Mortgage, $100.00. G. W. Wingate, att'y for mortgage. This mortgage, or a true copy thereof, must be filed—if in the city of New York, in the office of the register; if in any other city or county-town, in the clerk's office therein; if in any other town in this State, in the town-clerk's office. It becomes void if not renewed before the expiration of the year.

409 *Deposition of W'm M. Rogers, taken, subscribed, and sworn to before N. Austin Parks, examiner.*

MAY 13, 1869.

WILLIAM M. ROGERS, being duly sworn, doth depose and say in answer to interrogatories propounded to him by J. J. Cutter, esq., of counsel for complainant, as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. William M. Rogers; age, fifty-two; residence, South Portsmouth, R. I.; occupation, farmer.

Int. 2. Have you ever been engaged in the fish business in New York City? If yea, please state from what time to what time, and your place of business.

Ans. I have; from 1835 to 1861; probably a little before 1835. My place of business was in Fulton Market.

Int. 3. State, as near as you can, when you left the fish business in New York City, and also with what branch of the business you were connected, and with what parties, when you left the business.

Ans. My partnership business, or my interest in the business, ceased

in 1861. The name of the firm was not then changed, but I was employed on a salary until 1866. I was connected with the retail and wholesale fish business—mostly retail. When I left the business I was connected with William H. Middleton, Gilson Carman, and George H. Middleton. The firm-name was W'm M. Rogers & Co. until 1866.

Int. 4. What kinds of fish did your firm deal in at the time you left the business and while you were connected with it?

Ans. All of the principal fish that was exposed for sale in the markets.

Int. 5. While you were connected with the firm of W'm M. Rogers & Co. had you any acquaintance with the fish-dealers of New York City and the kinds of fish bought and sold in the markets of that city? and, if yea, please state to what extent.

Ans. I was acquainted with most of the principal dealers, whole-
410 sale and retail, the majority of them, and with the kinds of fish I was well acquainted—with every kind that was sold.

Int. 7. At what time in 1861 did you cease to be connected with the firm of W'm M. Rogers & Co. as a partner?

Ans. The last day of June.

Int. 7. Subsequent to that date, please state what you had to do with their business besides what you have already stated.

Ans. My principal business was to advise them, the latter part of the time; I retailed some. I continued with the firm until down in 1862. I did about the same as before when I was in business until some time near the first of July, 1862.

Int. 8. During the time you were connected with said firm, please state whether they purchased from any one any preserved artificially-frozen fish; and, if yea, state from whom they first purchased such fish, and when, and all the parties that they purchased such fish from.

(Objected to as immaterial.)

Ans. They did, according to the best of my knowledge, in the latter part of 1858, of Mr. Piper; of no other parties to my knowledge.

Int. 9. When first did you know or learn of preserved artificially-frozen fish being bought or sold in the New York markets?

(Objected to.)

Ans. In the latter part of 1858 was the first that I ever knew or heard of.

Int. 10. While you were connected with said firm, what other parties, to your knowledge, besides your firm and Mr. Piper, furnished preserved artificially-frozen fish to the New York markets?

(Objected to.)

Ans. I never knew or never heard of a firm.

Int. 11. From 1858 until July, 1862, what was the extent of the business of your firm as compared with the business of other fish-dealers in New York City?

(Objected to as immaterial.)

Ans. It was the leading firm in the retail business. It stood, to
411 the best of my knowledge, about equal to the wholesale dealers. Probably not more than two firms led the firm.

Int. 12. If any parties other than those you have mentioned had furnished preserved artificially-frozen fish to the New York markets from 1856 to 1862, please state whether you would have known it.

Ans. I think I should.

Int. 13. How positive are you about that?

(Objected to.)

Ans. Well, I made it my business to look after those things; and if

there was anything new in the market, to pick it up without regard to cost. I made it my business to look after such things, and find out what there was for sale. My dealings were very extensive with hotels, steamboats, and boarding-houses, and restaurants. I can say positive that if they had been in the market, or exposed for sale, I should have heard of them.

Int. 14. While you were connected with said firm, did they have a preserving-apparatus, or freezer for freezing fish? If yea, please state how many they had, and whether you ever examined them.

(Objected to.)

Ans. They had one to my knowledge. I saw it, but never minutely examined it. I saw the inside of it.

Int. 15. While you were connected with said firm, prior to July, 1862, had you any knowledge of any preserving-apparatus for freezing fish, of a kind similar to the one used by your firm, used by any other parties in New York City?

(Objected to.)

Ans. I did not. I knew of no other parties.

Int. 16. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market, New York City? If yea, how long have you known him?

Ans. I did know him when I was in business. I should think I knew him from ten or fifteen years; perhaps more.

Int. 17. Prior to your leaving said firm, in 1861, did your firm purchase or receive any artificially-frozen Spanish mackerel from Joseph H. Racey, jr.?

(Objected to.)

412 Ans. Not to my knowledge.

Int. 18. Would you have known it if they had?

(Objected to as immaterial, and also improper in form and substance, and as calling for the judgment and opinion of the witness and his conclusions.)

Ans. I think I should.

Int. 19. How positive are you about that?

(Objected to for reasons heretofore stated.)

Ans. Well, I think if there had been anything of the kind they would have told me of it; they generally did so.

Int. 20. Have you heard people speak of the character of Joseph H. Racey, jr., for truth and veracity?

(Objected to for reasons heretofore stated.)

Ans. I have.

Int. 21. Do you know the general reputation for truth and veracity of Joseph H. Racey, jr.?

Ans. I do. Probably I had better correct myself—I did when I was in New York. I don't know now.

Int. 22. Please state what it is.

Ans. For truth and veracity his reputation is spoken of as very bad.

Int. 23. Please state what it was when you were in business in New York.

(Objected to for reasons as hereinbefore stated.)

Ans. In regard to paying his debts was one thing; for truth—that is, I speak of his general reputation by hearsay, that is what I have heard. His reputation for truth and veracity was bad when I was in business in New York.

And, in answer to cross-interrogatories by Edward Avery, esq., of counsel for respondents, put de bene esse:

Cross-int. 1. How long have you resided in South Portsmouth, R. I.?

Ans. I believe I moved there in in '59; that is, my family, I think, didn't go back to New York; I think I took up my residence there
413 in '60; that is, paid my taxes there. I kept rooms in New York, or rather in Brooklyn.

Cross-int. 2. When you speak of your connection with the business in New York, what period do you embrace? That is, up to what time?

Ans. From '35 to '66. The name of the firm changed in '66.

Cross-int. 3. How much were you in New York from '62 to '66?

Ans. Very little, sir, after 1862.

Cross-int. 4. Were you there the greater part of the year '62?

Ans. Not the latter part of '62.

Cross-int. 5. Were you there during the years '60 and '61?

Ans. I was, sir.

Cross-int. 6. What part of the business did you have charge of during that period?

Ans. I had no particular charge of the business at all. I was an adviser, and at the same time knew all that was going on just as much as I ever did. I did but very little work for three or four years previous to leaving.

Cross-int. 7. Can you say as matter of memory that you, individually, did not purchase any Spanish mackerel or other fish of Joseph H. Racey, jr., or from the concern of Racey & Co., from 1856 to 1860 inclusive?

Ans. I can.

Cross-int. 8. Can you say as matter of fact that no member of your firm ever purchased any such?

Ans. I can, to the best of my knowledge and belief; or anybody else.

Cross-int. 9. What do you mean by that phrase "or anybody else?"

Ans. I mean if there had been any fish of that kind in the market I should in all probability have known it; if I had bought them I certainly should have known it, and if my partners had bought them I think I should.

Cross-int. 10. Do you mean to say that no Spanish mackerel were sold in New York during that time?

414 Ans. No frozen Spanish mackerel. I suppose you are speaking of preserved fish.

Cross-int. 11. Now, won't you answer the 7th cross-interrogatory as it is written?

Ans. According to the best of my knowledge and belief I never bought a fish of him, froze or unfroze.

Cross-int. 12. Was he indebted to the firm of W'm M. Rogers & Co. at any time during those years?

Ans. I can't state positively whether he was or not. It is my impression that he was. He was previous to that.

Cross-int. 13. Was not an account due from him to you settled in whole or in part by the sale of fish by him to your firm during those years?

Ans. Not to my knowledge.

Cross-int. 14. Does your memory embrace the entire transactions of those years, or do you mean that you don't now remember such transaction?

Ans. I don't remember such a transaction.

Cross-int. 15. As matter of fact, does your memory enable you to say that you never did receive any fish from Racey, or Racey & Co.?

Ans. It is possible, but it must have been some years back, I think. I didn't keep a book, so I can't tell dates.

Cross-int. 16. Can you tell what kind of fish you received?

Ans. Well, it was so long ago that I couldn't recollect.

Cross-int. 17. Would you swear that it was not Spanish mackerel?

Ans. To the best of my knowledge and belief I would.

Cross-int. 18. You can't remember what fish it was, but you can remember what fish it wasn't?

Ans. If we ever bought any, it must have been at a very early period.

Cross-int. 19. Have you any interest in the business of Middleton, Carman & Co. now?

Ans. None whatever.

Cross-int. 20. Neither directly nor indirectly?

415 Ans. Neither.

Cross-int. 21. According to the best of your memory, William M. Rogers & Co., or Middleton, Carman & Co., had but one freezer?

Ans. Yes, sir; but one freezer.

Cross-int. 22. You say you never examined that minutely. Could you describe the inside of it?

Ans. I don't know that I could particularly.

Cross-int. 23. Whom did you hear speak of the character of Joseph H. Racey, jr., for truth and veracity, in the year 1867?

Ans. I didn't hear anybody to my knowledge.

Cross-int. 24. Whom in the year '66?

Ans. I couldn't tell whether it was in '66 or '65. I don't remember the dates.

Cross-int. 25. Whom did you hear in '65?

Ans. I don't know that I could name any one in particular in '65.

Cross-int. 26. Whom in '64?

Ans. Well, I might as well explain that fully. I knew nothing of the man after '62, and don't pretend to.

Cross-int. 27. Whom did you hear speak of his character for truth and veracity in '62?

Ans. I can't name any particular individuals, but I'm speaking of his general character previous to '62, that is, whilst I was in business there.

Cross-int. 28. But you can't tell who spoke to you about it?

Ans. I cannot in particular, but I think I've heard several.

Cross-int. 29. When last?

Ans. Well, I can't give dates. When I heard him spoken of at all I didn't hear anything good of his character.

Cross-int. 30. Did you hear any one speak of him who then dealt with or associated with him?

Ans. I'm under the impression that I have.

Cross-int. 31. Who? Name the party.

Ans. I don't know as I could name the party.

416 Cross-int. 32. If you don't remember who they were, how do you know they were acquaintances, or persons who dealt with him?

Ans. Well, according to the best of my knowledge, he was well known in the wholesale department by every man individually. It was a very common word among the men round the market to look on him as a man who couldn't keep the truth on his side.

Cross-int. 33. Did you ever hear your former partner' say that his character for truth and veracity was bad?

Ans. I'm under the impression that I have, although I'm not positive about it.

Cross-int. 34. Which one of them, and when?

Ans. I don't know as I could say which, or at what time.

Cross-int. 35. Did you know or hear of his having a lawsuit some time in 1859 or '60?

Ans. Not to my knowledge. I've no recollection of that.

Cross-int. 36. You knew of his being embarrassed pecuniarily, didn't you?

Ans. I don't know, but I possibly may have heard something of the kind, but have no knowledge of it at all; never to take any notice of it whatever.

Cross-int. 37. In one of your previous answers you have said substantially that they said he didn't pay his debts. When was that?

Ans. I couldn't tell the dates, because, as I've said, I didn't go to the books at all.

Cross-int. 38. Can you remember three different persons who ever said to you that Racey's character for truth and veracity, independent of money matters, was bad?

Ans. I can't say that I can name any person.

And in answer to direct interrogatories resumed, deponent saith as follows, viz:

Int. 24. In answer to cross-interrogatory 21 you speak of a freezer. Please state at what time they had the freezer that you refer to.

Ans. They had no freezer in the fall of '61. That, I mean to say, was a temporary freezer.

417 Int. 25. Subsequent to that had they any other freezer that you know of?

(Objected to as not called for by anything in the cross-examination.)

Ans. They had a permanent freezer in '62.

Int. 26. What do you mean by the temporary freezer referred to in your answer to 24th direct interrogatory resumed?

(Objected to as before.)

Ans. It wasn't complete in all respects. It was a small freezer, and wasn't large enough to answer the purpose.

W. M. ROGERS.

Deposition of John H. Racey, taken, subscribed, and sworn to before me, John A. Shields, justice of the peace.

Present, counsel on both sides.

JULY 16, 1869.

JOHN H. RACEY, called as a witness on part of complainant, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is John H. Racey; my age is thirty-five; I reside at 221 West Twenty-eighth street, New York City; my occupation mail-driver, Dodd's Express.

Int. 2. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market, New York? If yea, how long have you known him?

Ans. Yes, I have known him since my childhood.

Int. 3. What relation is he to you, if any?

Ans. He is my brother.

418 Int. 4. Do you know William H. Racey, and how is he related to you?

Ans. I do; he is my brother.

Int. 5. Do you know fish-stands Nos. 15 and 17, in Centre Market, New York City, now occupied by your brother, Joseph H. Racey; and if so, how long have you known them?

Ans. I know that he has occupied those numbers for fifteen years; they were formerly Nos. 2 and 4.

Int. 6. Have you ever been employed by your brother, Joseph H. Racey, jr., in his business in Centre Market? If yea, state when you were first employed by him, as near as you can, and the time when you ceased to work for him in any capacity.

Ans. I have, as near as I can recollect, in 1849. I ceased working for him in the spring of 1863.

Int. 7. How much of the time from 1849 to the spring of 1863 were you employed by him?

Ans. I was not very regularly employed there, because there were times when I was errand-boy. I did not work all the year round for him, as there are seasons of the year when fish is of no account at all, and nothing done in it. I worked as overseer, or general man, around the stand; the last time I worked for him from November, 1861, to April, 1862, to 1863. I left his employment in the spring of 1863, in April.

Int. 8. The last time you were employed by Joseph H. Racey, jr., when did your employment commence, and when did it end? State the month and the year, as near as you can.

(Objected to as having before been asked.)

Ans. About November, 1862. It ended in April, 1863.

Int. 9. Prior to November, 1862, when was the last time you were employed by Joseph H. Racey, jr.?

Ans. It was in March, 1861, in Lent time.

Int. 10. From what time to what time did your employment then continue?

Ans. Only through Lent.

Int. 11. Where were you the balance of the year 1861?

(Objected to as immaterial.)

419 Ans. I was in a good many places during the war, while the war was going on.

Int. 12. What time in 1861 did you go to the war?

(Objected to as immaterial.)

Ans. April 21st.

Int. 13. When did you first return?

(Same objection.)

Ans. About the middle of June, I guess; June the 15th.

Int. 14. Did you go to the war again during the year 1861?

(Same objection.)

Ans. I went back in a California regiment.

Int. 15. When did you go, and when did you next return?

(Same objection.)

Ans. I was constantly going with recruits, and returning again.

Int. 16. Up to what date were you thus employed?

Ans. Till the first battle of Bull Run.

Int. 17. When did you first return after the first battle of Bull Run?

(Objected to as immaterial.)

Ans. On the 24th of July.

Int. 18. What business did you engage in after your return?

(Objected to as before.)

Ans. Recruiting. I was transferred to a French zouave regiment, recruiting for them.

Int. 19. When did you engage in the business of recruiting?

(Same objection.)

Ans. In the month of August, 1861.

Int. 20. How long did you continue in that business?
(Same objection.)
Ans. Until December, 1861.
Int. 21. What business did you next engage in?
(Same objection.)
Ans. I was enlisted then.
Int. 22. How long did you serve under that enlistment?
(Same objection.)
Ans. About three months.
420 Int. 23. What did you next do?
(Same objection.)
Ans. At work in the market.
Int. 24. What market, and in what business?
(Same objection.)
Ans. In Centre Market, 15 and 17; fish business.
Int. 25. For whom did you work?
Ans. Joseph H. Racey, jr.
Int. 26. What month did you then go to work for Joseph H. Racey, jr., and the year, as near as you can state?
(Objected to as having been once asked and as immaterial.)
Ans. About the latter end of November, 1861, I went to work for him.
Int. 27. You state of having enlisted in December, 1861. State if you went to the war under that enlistment.
Ans. No.
Int. 28. Where were you during that enlistment?
(Objected to as immaterial, and also as in the nature of cross-examination.)
Ans. New York City.
Int. 29. When did that enlistment commence, and when did it end? State as near as you can.
(Same objection.)
Ans. I could not exactly say. I could not say whether it commenced in August or September, 1861. I could not tell when the enlistment ended, as I was not with the regiment. The regiment served eight months and was disbanded.
Int. 30. Did the regiment go away into service?
(Same objection.)
Ans. Yes; with Burnside's expedition.
Int. 31. Why did you not go?
(Objected to for the reason before stated.)
Ans. On account of sickness.
Int. 32. Did you engage in any business in New York in the fall of 1861 besides recruiting?
(Same objection as before.)
Ans. No, sir.
421 Int. 33. When did that regiment leave New York for the war?
(Same objection.)
Ans. I can't give the date. I can't recollect the month. It was the early part of the winter of 1861.
Int. 34. Which winter of 1861, because there are parts of two winters in 1861?
(Objected to as leading, and as to the form of the question, and as to substance.)
Ans. I don't understand that.
Int. 35. What month in 1861 did the regiment leave?

Ans. I could not tell.

Int. 36. How soon after the regiment left did you go into the employment of Joseph H. Racey, jr.?

(Objected to for the reason before stated.)

Ans. A few days after.

Int. 37. How long did you continue to work for him after that? State as near as you can.

(Objected to on the grounds previously stated.)

Ans. Till about the 15th of April, 1862.

Int. 38. Were you employed in this Centre Market in the year 1856?

(Objected to.)

Ans. Yes.

Int. 39. By whom were you employed in that year, and in what business?

(Objected to as before.)

Ans. Different persons in the market.

Int. 40. Were you employed by Joseph H. Racey, jr., at any time from the beginning of 1856 up to April, 1861?

Ans. Yes.

Int. 41. How much of that time were you employed by him, and where, and in what business?

Ans. About eighteen months altogether, at 15 and 17 Centre Market, in the fish business.

Int. 42. In which years were those months, between the beginning of 1856 and April, 1861?

422 Ans. Portions of 1856, 1857, 1860, and 1861.

Int. 43. In what capacity were you employed by him?

Ans. As journeyman.

Int. 44. Please describe what you did while employed by him.

Ans. Well, I done everything but keep the books.

Int. 45. After you left his employ, in the spring of 1863, did you do any work for Mr. Racey, in his business?

Ans. No, sir.

Int. 46. Did you go to the war after you left his employ?

Ans. Yes.

Int. 47. When did you go to the war, after leaving his employ in the spring of 1863?

Ans. On the 10th day of October, 1863.

Int. 48. From the time you left his employ, in the spring of 1863, until you left for the war, in October, 1863, were you at his stands in the market; if yea, how often?

(Objected to as leading in form.)

Ans. Very often.

Int. 49. Do you know of his occupying a cellar under the market about that time?

Ans. Yes, sir.

Int. 50. What cellar was it, with reference to Broome street?

Ans. It was the second one from Broome street.

Int. 51. Have you ever done work in that cellar?

Ans. Yes, sir.

Int. 52. For whom?

Ans. Joseph H. Racey, jr.

Int. 53. How often?

Ans. About three times a day, I guess.

Int. 54. Were you in that cellar in 1863?

Ans. Yes, sir.

Int. 55. Did you do any work in that cellar for Joseph H. Racey, jr., in 1863?

Ans. No, sir.

Int. 56. What had you to do with it?

Ans. I had nothing to do with it.

423 Int. 57. I mean what had you to do with it while employed by Joseph H. Racey, jr.?

Ans. Unpacking the fish in the morning, and bringing them up to the stand. That was the first thing I did in the day. At noon I helped to grind the ice, and, if necessary, clean the ice-box out; then helped to pack the fish away. I generally got out salt fish for the following day.

Int. 58. Who occupied this cellar before Joseph H. Racey, jr., if you know?

Ans. I don't know.

Int. 59. While you were employed by Mr. Racey, how often did you work in the cellar after he occupied it?

Ans. I was continually going up and down in the cellar after the stand was opened in the morning.

Int. 60. When were you last in that cellar?

Ans. About three months ago.

Int. 61. What did you see in the cellar, then?

(Objected to as immaterial and irrelevant.)

Ans. I saw a number of different articles.

Int. 62. Did you see any freezing-apparatus for freezing fish?

Ans. Yes, sir; one large box.

Int. 63. Did you see the inside of it?

Ans. I did once; not that time. When it was building I saw it.

Int. 64. When was it that you saw the inside of it?

(Objected to for the reasons before stated.)

Ans. In the early part of the spring of this year.

Inf. 65. Had you ever seen it before?

Ans. No, sir.

Int. 66. Had you seen any other freezing-apparatus besides the one you have just spoken of in said cellar? If yea, please state when, as near as you can, and how many.

Ans. I seen two, about a year ago.

Int. 67. How many times did you see those two?

Ans. Not more than half a dozen times.

Int. 68. Did you see the inside of them?

424 Ans. Yes, sir.

Int. 69. Did you ever go inside of them?

Ans. I did, one; the large one.

Int. 70. Prior to seeing those two freezers in the cellar, about a year ago, as you have stated, did you ever see any freezing-apparatus for freezing fish in that cellar?

Ans. No.

Int. 71. When you ceased working for your brother, Joseph H. Racey, jr., what articles did he use in that cellar under the market?

Ans. He had an ice-box there, fish-barrels, two large hogsheads of salt cod-fish, baskets, boxes, fire-wood, and such stuff.

Int. 72. Please describe the ice-box you speak of in the cellar, when you were working for him last.

Ans. It was a common box, lined with zinc, its lids lifted up. There was nothing but ice and fish in it, that I know.

Int. 73. How was it used?

Ans. The box was cleaned out, the ice ground up, and a layer of 'ce

put on the floor of the box; then packed the fish in, one layer, and put ice on the top of them again. That is all I know, except that occasionally lobsters, and sometimes a kettle of opened oysters, would be put in on the ice over night.

Int. 74. How was the box entered?

Ans. By lifting the lid on top, and laying it against the wall.

Int. 75. Was there any door to the side of it?

(Objected to as leading.)

Ans. Not as I know of.

Int. 76. How long had that box been in the cellar?

Ans. I could not tell how long it had been there. I don't recollect. It was there when I came to work, and it was there when I went away.

Int. 77. Had Mr. Joseph H. Racey, jr., any other ice-boxes about that time, in or about the market?

Ans. He had one by the fish-board at his stand.

Int. 78. What difference was there between the ice-boxes.

(Objected to as to form.)

425 Ans. Only in size.

Int. 79. What kind of an ice-box was that at the stand?

Ans. The same as the one in the cellar.

Int. 80. Did you see at that time other ice-boxes used by marketmen and fish-dealers in that market?

(Objected to as immaterial.)

Ans. Yes, sir; they were different in form.

Int. 81. When these ice-boxes were in use, was the ice mingled with any other substance besides what you have mentioned?

(Objected to as leading, and generally as to form.)

Ans. I never used anything but ice itself.

Int. 82. How was the ice ground?

Ans. By a machine.

Int. 83. While you were working for Joseph H. Racey, jr., who had charge of those ice-boxes?

Ans. I had charge of them myself the last time I was working for him.

Int. 84. Who ground the ice?

Ans. Well, it was either me or one of the boys that was working there.

Int. 85. While you were employed, as you have stated, at these stands, in the fish business, what, if anything, had William H. Racey to do with the business?

(Objected to as immaterial and irrelevant.)

Ans. He was salesman and book-keeper until he went away with his regiment.

Int. 86. In whose name was the business carried on there up to the time you left?

(Objected to as immaterial and irrelevant.)

Ans. Racey & Company.

Int. 87. What, if anything, had William H. Racey to do with the business at those stands after he went away with his regiment?

(Same objection.)

Ans. Nothing that I know.

Int. 88. Who paid you your wages during the last portion of the time you were there?

426 (Objected to for the same reason.)

Ans. Joseph H. Racey, jr.

Int. 89. During the time you were employed at those stands, in the

fish business, as you have stated, was there at those stands, or in the cellar spoken of, any freezing-apparatus for freezing fish?

(Objected to as leading and generally as to form.)

Ans. None that I saw.

Int. 90. While you were there employed as stated, were any fish or game frozen at those stands, or in the cellar, by Joseph H. Racey, jr., or any one else?

(Objected to as before.)

Ans. None that I saw.

Int. 91. Were you at work at those stands at the time you first went to the war, in April, 1861?

(Objected to as leading and generally as to form, and also because the same question, substantially, has been previously put to the witness.)

Ans. Previous to that I was.

Int. 92. How near to the date of your going to the war?

(Objected to for the same reason.)

Ans. Two or three days before.

Int. 93. How long had you then been employed at those stands?

Ans. I was off and on there working from the time I came home, May 30th, 1860.

Int. 94. When did you first see a freezing-apparatus for freezing fish, belonging to any one?

(Objected to as immaterial and irrelevant and also as to form.)

Ans. I saw a freezing-apparatus, but it did not belong to Joe. It was not for freezing fish. The first one I saw for freezing fish altogether was down in Joe's cellar, about a year ago.

Int. 95. When did you first learn of Joseph H. Racey, jr., having a freezing-apparatus for freezing fish? State as near as you can.

(Objected to for the reasons before stated.)

Ans. About a year and a half ago.

Int. 96. Whom do you refer to by the name of Joe in your previous answers?

427 Ans. My brother, Joseph H. Racey, jr.

Int. 97. In what business were you engaged in the first part of 1862?

(Objected to as immaterial, irrelevant, and also as to form.)

Ans. I was working in the fish-market for Joseph H. Racey, jr.

Int. 98. How were you engaged in the summer of 1862?

(Same objection.)

Ans. I was officer of the new Bowery theatre.

Int. 99. Referring to the ice-box that you have stated was in the cellar, used by Joseph H. Racey, jr., when you ceased to work for him the last time, will you describe particularly the interior of that box?

Ans. It was nothing but a plain zinc lining.

Int. 100. Were there any perpendicular pipes or tubes in it?

(Objected to as leading and generally as to form.)

Ans. No, sir.

Int. 101. What tubes or pipes, if any, were there inside of the box?

(Same objection as before.)

Ans. There was a small pipe set in the bottom of the zinc to let out the water. That was the only pipe I saw in it.

Int. 102. Will you please examine question and answer No. 9, and question and answer No. 97, and explain what you mean by your answers?

(Objected to as improper, not being called for by the witness; the

meaning of answers is not open to explanation by the witness at the call of the party producing him.)

Ans. In my answer No. 9 it should be March, 1862.

Cross-examination de bene, waiving no objections heretofore taken by any inquiries in relation to matters objected to.

Cross-int. 103. Please state your full name, and how long you have been called by the name that you give?

428 Ans. When I got married I gave my name as John Henry Racey. I have been called by the name I give since 1852. My name is registered in Mott, Bedell & Co.'s office, South street, New York City, as John Henry Racey.

Cross-int. 104. Before 1852 by what name did you go?

Ans. John Racey.

Cross-int. 105. Did you use no middle name or letter before you adopted the H?

Ans. No, sir.

Cross-int. 106. Did you ever go by the name of John P., J. P., or John Peter?

Ans. No, sir.

Adjourned to Saturday, July 17, 1869, at 10 a. m.

JULY 17, 1869.

Counsel for respective parties present.

Cross-examination of John H. Racey resumed.

Cross-int. 107. Is your father and mother living?

Ans. Yes.

Cross-int. 108. Where, and with whom?

Ans. Well, I suppose with Joseph H. Racey, jr., 219 East Twelfth street. Not visiting there at present, I don't know for certain.

Cross-int. 109. Is it your father and mother whom you do not visit or your brother Joseph?

Ans. All three.

Cross-int. 110. How long is it since you have been on visiting terms with them, and when did you visit them last?

(Objected to as irrelevant and immaterial.)

Ans. Since July the 4th, my father and my mother; I never had time to visit them, as I work half day and half night. If I had gone there I would have seen Joseph, too. I have not visited them since I have been driving the mail, and that is eight weeks.

429 Cross-int. 111. I don't think you have answered the question which was put to you. When did you cease to be on visiting terms with your father and mother and your brother Joseph?

(Objected to as irrelevant and immaterial, and because no proper foundation has been laid for the inquiry.)

Ans. Never.

Cross-int. 112. Your relations, then, with each one of them are perfectly kind and friendly?

(Same objection as to int. 110.)

Ans. On my part they are.

Cross-int. 113. How is it on their part?

(Same objection.)

Ans. You must get them to answer for themselves. I answer for myself. I am not their keeper.

Cross-int. 114. Do you mean to say that there is no misunderstanding

or disagreement between yourself and the other members of your family, or any of them?

(Objected to as before.)

Ans. I object to answer it.

Cross-int. 115. Do you decline to answer the question?

Ans. Yes.

Cross-int. 116. Why?

Ans. Particular reasons.

Cross-int. 117. Have you spoken to or with your brother Joseph during the past year?

Ans. Yes, sir.

Cross-int. 118. When, and where?

Ans. In the market; I suppose about some ten weeks ago. I have seen him since, when I was on the wagon, and nodded to him.

Cross-int. 119. Did you go to the market for the purpose of seeing him?

Ans. No, sir; not then.

Cross-int. 120. Did you meet him accidentally?

Ans. Yes.

Cross-int. 121. When last before that did you see him?

430 Ans. I saw him every day except Sunday.

Cross-int. 122. When last, before the time mentioned in the answer to the 118th cross-interrogatory, did you speak with your brother Joseph?

Ans. Every day from last December, except Sundays, that he was there—at the stand, I mean.

Cross-int. 123. When last did you visit his house?

Ans. I don't recollect.

Cross-int. 124. Has there been no disagreement or misunderstanding between you and your brother Joseph?

Ans. In what regard? Brothers will sometimes have disagreements.

Cross-int. 125. In any regard or in any particular during the past ten years?

Ans. Not of any account.

Cross-int. 126. Have you not said that you and Joseph were not on good terms with each other, and that he was a bad brother to you?

Ans. Yes, in anger.

Cross-int. 127. Did you not say so yesterday, substantially, during the progress of your examination?

Ans. To whom did I say it?

Cross-int. 128. The question is addressed to you. Please answer it.

Ans. Not to my recollection.

Cross-int. 129. When you were asked yesterday what relation Joseph H. Racey, jr., was to you, did you not say, "He is my brother, and a bad one, too?"

Ans. Not to my recollection.

Cross-int. 130. Will you swear that you did not?

Ans. Not in my evidence.

Cross-int. 131. You were not asked that. Why will you not answer the question as put?

Ans. What is the use of beating around the bush? I was not asked the question whether he was a good brother or a bad brother.

431 Cross-int. 132. Did you say he was a bad brother?

Ans. Not while I was here, yesterday, to my recollection.

Cross-int. 133. Now, will you say, as a matter of positive memory, that

you did not use the words just as I have written them—"He is my brother, and a bad one, too?"

Ans. I have answered you three times.

Cross-int. 134. Do you decline to answer the question directly?

Ans. I have answered it there directly, three times.

Cross-int. 135. Do you decline to answer the question last put to you by a yea or nay?

Ans. Well, I have answered it, and what is the use of saying yes or no, to fill up another leaf with the same thing?

Cross-int. 136. Is your answer to the 133d interrogatory, yes or no?

Ans. I don't recollect using the words.

Cross-int. 137. I repeat the 133d interrogatory, and desire you to answer it.

Ans. I don't recollect using the words. If I said yes, or no, I should lie one way or the other.

Cross-int. 138. Then, for aught you now recollect, you may have said so?

Ans. I don't admit that I did. Not in this court-room.

Cross-int. 139. Do you say you did not?

Ans. My answer is there. I say I don't recollect whether I did or not.

Cross-int. 140. Will you answer the question directly, yea or nay?

Ans. No. [I have repeatedly said that I don't recollect.]

(Counsel for defendants objects to the part of the answer in brackets because it was given after counsel for complainant had suggested in the hearing of the witness that the answer, as originally given, was not quite responsive.

Counsel for complainant states that he did not make the suggestion stated in the objection of counsel for the respondent.)

Cross-int. 141. While you were at work for your brother Joseph in 1859, as stated in your answers to interrogatories 6 and 7, who else beside you was in his employ?

432 (Objected to, because there is no statement in said answers that the witness so worked for his brother in 1859.)

Ans. I was not at work for him in 1859. I was in South America, in Paraguay.

Cross-int. 142. Were you at work for him in 1858?

Ans. No, sir.

Cross-int. 143. What time did you leave him prior to 1858?

Ans. During 1857.

Cross-int. 144. What time in 1857?

Ans. I don't know.

Cross-int. 145. Don't you remember?

Ans. No, sir.

Cross-int. 146. Did you work for him in 1856?

Ans. Yes, sir.

Cross-int. 147. Did you work for him all the year?

Ans. A portion of it.

Cross-int. 148. What portion of it?

Ans. Part winter and part summer.

Cross-int. 149. What were you doing?

Ans. Well, almost everything that is to be done around a fish-stand, except book-keeping.

Cross-int. 150. Did you pack fish in the ice-box, in the cellar, that year?

Ans. I helped to pack it.

Cross-int. 151. Also in 1857?

Ans. Yes, sir.

Cross-int. 152. When did you come back from Paraguay?

Ans. May the 30th, 1860.

Cross-int. 153. Did you go immediately into your brother's employment?

Ans. Not right away.

Cross-int. 154. How soon after?

Ans. I don't recollect.

Cross-int. 155. Did you work for him in the fall of 1860?

Ans. I might have.

Cross-int. 156. Don't you remember whether you did or not?

433 Ans. I was always doing something about the stand for either William or Joseph after I came home.

Cross-int. 157. You have not answered the question.

Ans. I have stated that I was not regularly employed. I was not hired by the day, month, or year.

Cross-int. 158. Did you receive any pay for what you did about the place in any part of 1860?

Ans. Certainly I did.

Cross-int. 159. How much did you receive, when did you receive it, and who paid you?

Ans. That is too far back for me to recollect the items.

Cross-int. 160. Can you recollect the aggregate?

Ans. No, sir.

Cross-int. 161. You are positive, however, that you were paid for services rendered there in the year 1860, are you?

Ans. Yes, sir; whatever I done I was paid for.

Cross-int. 162. Did you continue right on in the year 1861, commencing with the year?

Ans. No, sir.

Cross-int. 163. What, if any, portion of the year 1861 were you employed by your brother Joseph at the stands?

Ans. Through a portion of Lent.

Cross-int. 174. Any other part of the year?

Ans. Through the winter.

Cross-int. 165. During these two years, 1860 and 1861, did you assist in packing fish in the cellar and unpacking them?

Ans. Yes, sir.

Cross-int. 166. Who besides yourself was employed about the stands during the year 1860?

(Objected to on the ground that no proper foundation has been laid for the question, it not appearing that the witness was employed at those stands during the whole of said year, or knew the names of the parties employed to work there.)

Ans. My brother William, Gerry, Major, Tom Lane, a negro. That is all I can recollect besides myself and a man called Schwach.

434 Cross-int. 167. Were those all at work there at the same time with you in both the years 1860 and 1861?

Ans. No, sir; not at all times.

Cross-int. 168. Which of them was there during the whole of the time you were employed?

Ans. William.

Cross-int. 169. What did your brother William do during 1861 at the stands?

Ans. Book-keeper and salesman up to April the 21st.

Cross-int. 170. What did he do after that?

Ans. He enlisted in the 71st regiment.

Cross-int. 171. Did you still continue in your brother Joseph's employ?

Ans. No; I went away the same time William did, the 21st of April.

Cross-int. 173. Where did the ice-box stand in the cellar, into which you packed the fish, as you have previously stated?

Ans. On the left-hand side, going down; on the side nearest to Broome street.

Cross-int. 173. Did you ever know it to stand in any other place in the cellar up to the time you left in April, 1861?

Ans. No, sir.

Cross-int. 174. Do you remember when it was put there?

Ans. No, sir; I do not.

Cross-int. 175. In 1862, when you resumed work for your brother Joseph, did that ice-box stand in the same place?

Ans. I worked from the latter part of November, 1851, until April, 1862, and during that time the ice-box remained in the same position.

Cross-int. 176. How was it in 1863?

Ans. I paid no particular attention to it, as others had to do it then.

Cross-int. 177. Don't you remember how it stood in 1863?

Ans. I suppose it stood in the same place.

Cross-int. 178. Don't you know?

Ans. It was either that one or one similar to it.

435 Cross-int. 179. Can't you tell which?

Ans. I did not have the filling of the ice-box; therefore I could not tell whether it was the old one or a new one.

Cross-int. 180. Was there anything in the cellar in 1863 besides baskets, barrels, and hogsheads of fish?

Ans. Not that I saw.

Cross-int. 181. What time in 1863 did you leave the employment of your brother Joseph?

Ans. Well, I could not tell exactly, as I was around the stand up till about the 19th of October, doing a little of all work, little light jobs around the place, collecting bills, etc. I knew what was around the place.

Cross-int. 182. During any time while you were in your brother Joseph's employment prior to the year 1863, was there an ice-box or freezer on the right hand of the cellar as you enter?

Ans. There was one there during the time I worked for him, an old ice-box, but it belonged to Mr. Tuomey, a butcher, who put his meats in it.

Cross-int. 183. Are you sure that it belonged to Mr. Tuomey, and that he used it?

Ans. Well, his journeymen used it.

Cross-int. 184. Did not your brother Joseph use it too?

Ans. Not while I was employed there.

Cross-int. 185. Was that a box about five feet high, six or eight feet long, and between four or five feet wide, or a smaller box?

Ans. I think it was a smaller box.

Cross-int. 186. Was it not a common ice-box, with a cover lifting up from the top?

Ans. The same as I described yesterday in all particulars.

Cross-int. 187. Then both the boxes, that belonging to your brother Joseph and that belonging to Tuomey, were alike in construction, were they?

Ans. There might be some difference in the front part of the box on the panel work, but the interior of both boxes was alike.

Cross-int. 188. Did both of them have doors dropping down from the front?

436 Ans. No, sir. There was a hinged front to my brother Joseph's ice-box, but no door; so that it could be let down to enable a person to lean into the box and place fish on the bottom of it, which I did not notice on Tuomey's box?

Cross-int. 189. When was the Tuomey box put into the cellar?

Ans. I don't know, sir.

Cross-int. 190. When did you first see it there?

Ans. I don't recollect; I know it was not there when I left working there steady in 1861 and 1862.

Cross-int. 191. Was it there before you went to Paraguay?

Ans. I could not say, for Joseph did not have the cellar then; and therefore we did not have access to it

Cross-int. 192. Do you know who did have it then?

Ans. No.

Cross-int. 193. Were you ever in that cellar before 1860 or 1861?

Ans. Before 1861 I was.

Cross-int. 194. When first?

Ans. A very short time after I came home in 1860.

Cross-int. 195. If I rightly understand you, from 1860 down to and including 1863, the only articles belonging to your brother Joseph, which you saw in the cellar, were the ice-box on the left-hand side of the entrance, baskets, barrels, hogsheads of fish, and ice-grinder. Did you ever see anything else there that you now remember?

Ans. Nothing outside of what is enumerated in your question.

Cross-int. 196. Who was with you when you last visited that cellar?

Ans. Nobody.

Cross-int. 197. Who did you meet there?

Ans. His man Peter.

Cross-int. 198. What did you see in the cellar then?

Ans. I saw the new ice-box—that patented one that he has got up there for freezing fish and game.

Cross-int. 199. What else did you see there?

Ans. The eel-tank.

437 Cross-int. 200. When did you first see the eel-tank?

Ans. About a year and a half ago.

Cross-int. 201. Has there been any change in the position of the eel-tank since you first saw it?

Ans. I did not notice any difference in the position of it.

Cross-int. 202. That eel-tank was not there in 1863, was it?

Ans. I did not see it there.

Cross-int. 203. To what do you refer in your answer to the 94th interrogatory when you say that you saw a freezing-apparatus which did not belong to Joe and which was not freezing fish?

Ans. It was a coffin with a glass front, for preserving the dead.

Cross-int. 204. When and where did you see that?

(Objected to as irrelevant and immaterial.)

Ans. I saw it in an undertaker's during the war.

Cross-int. 205. After you enlisted in 1861, in the 53d zouave regiment, when were you discharged?

Ans. I never was discharged. My name was not on the regimental rolls, but it was on the descriptive list.

Cross-int. 206. Were you ever mustered into service in that regiment?

(Objected to as irrelevant and immaterial.)

Ans. No, sir.

Cross-int. 207. Did you ever pretend to be a member of that regiment?

(Objected to as before.)

Ans. I was acting third sergeant, Company I.

Cross-int. 208. How could you be acting as sergeant unless you were a member of the regiment?

(Same objection as before.)

Ans. I swore in as one.

Cross-int. 209. Where and before whom were you sworn in?

(Objected to as before.)

Ans. Before the United States officer, in White street. Dr. Mott was the surgeon.

Cross-int. 210. Did you ever go into camp after you were sworn in?

438 (Objected to as before.)

Ans. Yes, sir; with recruits.

Cross-int. 211. Did you receive any leave of absence from the proper officers of the regiment?

(Objected to as before.)

Ans. There was no one to receive authority from. The regiment was not complete.

Cross-int. 212. Do you mean to say that after you were sworn in and went into camp you could go and come at your own will?

(Objected to as before.)

Ans. I answered that before. I did not go into camp. I remained at the office in Broadway, recruiting men for the company.

Cross-int. 213. Who authorized you to act as recruiting-officer after you were sworn in before the United States officer?

(Objected to as before.)

Ans. William H. Racey.

Cross int. 214. What position did he hold in the regiment?

(Same objection as before.)

Ans. Captain pro tem., Company I.

Cross-int. 215. In what capacity did he go with the regiment?

(Objected to as before.)

Ans. He might have been cook of the company for what I know, as I did not go with them.

Cross-int. 216. Do you mean to say that you never heard in what capacity your brother William went with that regiment?

(Same objection as before.)

Ans. He was always addressed by me and others as captain until the regiment sailed. I never saw his commission.

Cross-int. 217. What was the matter with you when the regiment sailed?

(Objected to as before.)

Ans. I had a heavy cold. I was refused by the colonel to be let go. I was sent ashore from the steamer off Staten Island.

Cross-int. 218. Who sent you ashore?

(Objected to as before.)

Ans. The colonel.

439 Cross-int. 219. Who is he?

Ans. He is colonel of the 53d.

Cross-int. 220. Did you ever join the regiment afterwards?

(Objected to as before.)

Ans. No, sir. They were dismissed in disgrace.

Cross-int. 221. When and by whom?

(Objected to as before.)

Ans. They were dismissed, after they had served eight months, by General Hatch.

Cross-int. 222. Why did you not join them during the eight months?

(Objected to as before.)

Ans. Because I did not see fit to.

Redirect:

Int. 223. Will you please examine questions and answers, Nos. 150, 151, and 191, and state whether you wish to make any alteration or explanations of your answers, or either one of them; if yea, please do so.

(Objected to, as the witness has expressed no desire to explain and as being an improper mode of correcting apparent contradictions.)

(Question withdrawn.)

Int. 224. Will you please examine questions and answers from No. 146 to 151, both inclusive, and question and answer 191, and state whether you wish to make any alteration or explanation of your answers, or either one of them; if yea, please do so.

(Objected to, as the witness has expressed no desire to explain and as being an improper mode of correcting apparent contradictions.)

Ans. I say that the cellar which he occupies now in Centre street had no reference to that in 1856. The cellar which he occupied in 1856 was another cellar in Centre Market place. That is all the explanation that I desire to make. He never had but a common ice-box in either place when I left him.

440 Recross:

Cross-int. 225. Of whom did he hire the cellar in Centre Market place, *and of whom did he hire it?*

Ans. I don't know.

Cross-int. 226. Did he have the same box in each cellar?

Ans. No, sir.

Cross-int. 227. How do you know he did not?

Ans. Because I'll swear that he did not.

Cross-int. 228. Is that the only way you know it?

Ans. By seeing it every day while I was around the place.

Cross-int. 229. What became of the old one?

Ans. It was broken up.

Cross-int. 230. When?

Ans. That I don't know.

Cross-int. 231. Who broke it up?

Ans. I don't know. It was broken up by Joe's orders.

Cross-int. 232. Did he give you the order or did he give it in your hearing?

Ans. No, sir; he did not give the order in my hearing.

Cross-int. 233. Did you see it broken up?

Ans. No, sir.

Cross-int. 234. When did you first see the ice-box in the cellar at the Centre Market?

(Objected to, because it does not appear what ice-box is referred to, and if the first ice-box is intended, the question has been already asked and answered.)

Ans. It was in the year 1860; a common ice-box I have reference to.

Cross-int. 235. On which side of the door did it then stand?

(Objected to, because the question has already been asked by counsel for respondents and answered by the witness.)

Ans. On the left side going down, nearest Broome street.

Cross-int. 236. Did any one but your brother and Mr. Tuomey then occupy that cellar, as far as you know?

441 (Objected to for being indefinite and not open to the counsel in this stage of the examination of the witness.)

Ans. Which brother have you reference to?

Cross-int. 237. Was it ever occupied by more than one of your brothers?

(Same objection.)

Ans. Only one—Joseph.

Cross-int. 238. Will you now please answer question 236?

(Same objection.)

Ans. Only Mr. Tuomey and Joseph occupied it. Both my brothers, William and Joseph, used to be behind the stand. William was in the employ of Joseph.

Cross-int. 239. What do you mean by the last part of your last answer?

Ans. I mean that Joseph was "boss," and William was journeyman.

JOHN HENRY RACEY.

Adjourned to Tuesday, July 20, 1869, at 10 o'clock, a. m.

Deposition of Enoch Piper, taken, subscribed, and sworn to before N. A. Parks, examiner.

SEPTEMBER 10, 1869.

ENOCH PIPER, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Causten Brown, esq.:

Int. 1. State your name, age, residence, and occupation.

Ans. Enoch Piper; age sixty-three years; residence, Camden, Maine; occupied in the salmon-business. I am complainant in this cause.

Int. 2. Will you state in what year you began your studies and

442 experiments upon the subject of the method of preserving fish, etc., to which your invention relates?

Ans. In the winter and spring of 1858.

Int. 3. What had been your previous business?

Ans. My business for ten or twelve years prior to my experiments was coasting. I was engaged in the smacking-business.

Int. 4. In the neighborhood where you live was the export of salmon to points farther south carried on?

(Objected to as immaterial.)

Ans. It was.

Int. 5. State what was the first thing that you did in the matter of artificially-freezing fish and when you did it?

Ans. I first froze about a half-dozen haddock and small cod. That was in the spring of '58.

Int. 6. What led you to do that?

(Objected to as immaterial.)

Ans. That experiment was principally to ascertain whether fish artificially frozen would be the same as those naturally frozen.

Int. 7. What was the result of the experiment as to that point?

Ans. The result was satisfactory. We could discover no difference after having had them frozen a week or ten days.

Int. 8. State what sort of apparatus you used in that experiment and who devised or constructed it.

Ans. I constructed a small temporary apparatus for that purpose, a

sort of a U-shaped arrangement, that was put inside of a box. This U-shaped arrangement was made of zinc, with the exception of the ends, which were wood. It was something like two and a half or three feet in length, about two feet deep, and about one foot wide. There was a space of two inches, more or less, between this U-shaped arrangement and the outer box. There was a pan or cover on top of this U-shaped arrangement that fitted inside the outer box and rested upon the U. The sides and ends were of wood, six inches, more or less, high; the bottom of sheet-zinc. I placed the fish inside of this U, and used a freezing-mixture of salt and ice, which I put around the U arrangement and into the top pan.

443 Int. 9. Will you produce a model of the apparatus which you so used, first stating what become of the apparatus itself?

Ans. I don't know but the apparatus may be in existence yet. I never made use of any part of it but the pan after the first experiment. I produce a model of it; it is marked "Piper Model No. 1, N. A. P., Ex'r."

Int. 10. The model appears to show a drain-pipe leading out from near the bottom; was there any such thing in the apparatus itself; and if so, what was the office of it, and how did you use it?

Ans. I think there was; either a hole bored or a drain-pipe. I mean there was a hole in it, but I am not certain about the drain-pipe. The hole was for the purpose of giving the pickle a chance to escape as the salt and ice dissolved. I think there was a pipe in this hole.

Int. 11. What time in the spring of '58 was it that you so used this apparatus; what was the weather?

Ans. It was in March or April. There was ice at that time, for I recollect that I charged up with the ice from the ground.

Int. 12. What was the next thing that you did in the matter of artificially-freezing fish, and when was it?

Ans. I constructed the hogshead arrangement such as I described in my caveat. This was in the month of June, '58.

Int. 13. Will you produce in evidence a certified copy of your caveat?

Ans. I do; it is identified by the initials of the examiner upon the top of the certificate.

(Counsel for respondents objects to the admissibility of the caveat in evidence.)

Int. 14. Will you produce a model representing the hogshead arrangement just referred to by you?

Ans. I do; it is marked "Piper Model No. 2, N. A. P., Ex'r."

Int. 15. Describe how you used the apparatus of which this is a model, and give the dimensions of the apparatus.

(Objected to as immaterial.)

Ans. A hogshead is somewhere between thirty-three and thirty-six inches in height, one to hold one hundred and thirty or one

444 hundred and forty gallons. There were two of these hogsheads surrounded by a partition or casing, leaving a space between the partition or casing of the hogshead at the sides, ends, and bottom, distant from the hogshead a foot or more. The space between the partition or casing and hogsheads was filled with sawdust; likewise the top of the hogsheads, after the cover was put on, was covered with sawdust. A cast-iron tube, about ten inches in diameter, was placed in the centre of each hogshead, fastened to the lower head by a flange with screws passing through. I used Indian rubber or leather, or something of that kind, between the iron and the wood, between the flange and the wood, to make it as tight as possible. The upper end of the tubes was some six or eight inches higher than the top of the hogshead, with a cover or

head with a hole through the centre, so as to pass down over the tube with its lower side resting upon the top of the hogshead. The cover was made of two thicknesses of board; one thickness passed inside of the hogshead while the upper thickness rested upon the top edge of the hogshead. We had to trim the sharp edge of the chine down somewhat. Small leaden drain-pipes were inserted through the bottom head inside of the cast-iron tube, and projected outside of the partition or casing through the packing of sawdust for the purpose of drainage. I had an arrangement at the top just under the cover, formed with cross-pieces, with a hoop resting on top of them about half way from the funnel to the sides of the hogshead, for the purpose of hanging the fish in order to freeze them. The funnels were charged with salt and ice, using as much salt as would dissolve with the ice. After leaving them in a sufficient length of time to have them thoroughly frozen we would take them out of that hogshead and stow them in the other, which was filled in the same manner with the freezing-mixture.

Int. 16. How did you use your drain-pipes in this apparatus?

(Objected to as before.)

Ans. I had plugs or faucets, caps or faucets, to close the outer ends of the drain-pipes so that I could let off the accumulated pickle generally about once in twelve hours. In fact we used to charge about once in twelve hours in summer.

445 Int. 17. How many fish did you put into the freezing-hogshead in the apparatus you have described?

(Objected to as before.)

Ans. I think just forty-five; between forty and fifty, any way.

Int. 18. To about what temperature did you bring the air of the freezing-chamber in which you hung the fish?

(Objected to as before.)

Ans. I could get it down to about 18°; that's the lowest I ever got it. We generally put in from a half-dozen to a dozen fish at once, and that would raise temperature directly to about 32°. Then, as the fish gradually froze, the thermometer gradually sank. After the fish was stowed away for good, the frost accumulating on the tube some five or six weeks, we were unable to keep the temperature below about 27°, until the approach of cold weather.

Int. 19. How long did you keep them in the freezing-hogshead until you removed them to the preserving-hogshead?

(Objected to as before.)

Ans. That depended on the quantity. If I put in a half-dozen I didn't have to keep them so long as if I had a dozen. Say from forty-eight to sixty hours.

Int. 20. And about what temperature did you maintain in the preserving-hogshead?

(Objected to as before.)

Ans. At first I had about 20°, but, as I observed before, in five or six weeks the frost accumulated so that I wasn't able to keep it below 27° till the approach of cold weather.

Int. 21. Where did you put the fish, the forty-five or thereabouts you mentioned, into your preserving-hogshead, and when did you take them out, and what did you then do with them?

(Objected to as before.)

Ans. I put them in the latter part of June and first part of July, 1858, and took them out about the 1st of December following. I brought them to Boston in my schooner; I put them into boxes—I think Havana sugar-boxes—with some loose light snow under the bot-

tom. I made some covers or pans to cover the top of the boxes, the sides and ends of which were of wood, and the bottom of zinc,
446 so that when there was any thaw or soft weather I would use the mixture of salt and ice in those pans, so that I kept the fish continually in a frozen state. That's the way I brought them to Boston.

Int. 22. What did you do with them after you got to Boston?

(Objected to as before.)

Ans. I hauled in to Lewis's wharf to discharge some lobsters from my smack to Mr. Marston. [After that, Mr. Marston supplied an order for one hundred pounds of salmon to a party in New York. I then wrote to the party in New York at his recommendation. I think I received an answer—I did not preserve the letter—to the effect that I asked too much for my fish, namely, a dollar a pound, and they were willing to pay that for what they had ordered.] Finally Mr. Carman came on from New York and bought the balance, all but one or two fish. I think I made some reduction in the price, as some were not perfect.

(Passages in brackets objected to, as stating hearsay, and the contents of written papers not produced.)

Int. 23. Of what, if any, firm was Mr. Carman then a member?

(Objected to as immaterial.)

Ans. Of the firm of W. M. Rogers & Co., of New York.

Int. 24. Did you, after that, furnish frozen salmon to Rogers & Co., or their successors? If so, at what times?

(Objected to as before, and as to the form of the inquiry, and as leading.)

Ans. Ever since, to the firm and their successors. Every year since out of season.

Int. 25. What do you mean by "out of season?"

(Same objection as to last interrogatory.)

Ans. Out of season of their catch.

Int. 26. What are the months during which salmon are caught?

(Same objection as before.)

Ans. They are generally taken at Camden, where I then resided, from the first of May to about the 4th of July, very scattering before and after that time.

Int. 27. When did you send your caveat to Washington?

447 (Objected to, for reasons above stated, and also not as the best evidence of that fact.)

Ans. In the early part of July, '58.

Int. 28. When did you make your Patent-Office model for obtaining your first patent?

Ans. I think I had it made in December, '58, while I was here, with my fish in my schooner.

Int. 29. Will you produce a model of the same construction?

Ans. I do. It is in two parts, marked, respectively, "Piper model, No. 3, A, N. A. P., Ex'r," and "Piper model, No. 3, B, N. A. P., Ex'r," respectively.

Int. 30. What was the next thing that you made, having reference to the artificial freezing of fish?

Ans. I had a different arrangement for freezing them from that freezing model there, meaning "No. 3, B." Instead of putting the freezing-mixture into pans, I had pans constructed with covers, in which I put the fish, and surrounded the tops and sides and ends of the pans with the freezing-mixture, and allowed the pickle to flow under the pans, which were, or the bottom of which were, elevated a little from the

platform or floor of the box, which had a drain-pipe a little up from the floor, so that the pickle flowed against the bottom of the pans.

Int. 31. Did you between the time that you used the apparatus shown by Piper model No. 2, and the time of your using the apparatus just described, of placing the fish in the pans, use any, and what, apparatus for freezing and preserving fish?

(Objected to as to form and substance.)

Ans. Why, I used this arrangement shown by "No. 3, A," and "No. 3, B," for a year.

Int. 32. What year's catch did you freeze and preserve in that apparatus shown by "No. 3, A," and "No. 3, B?"

Ans. The catch of 1859.

Int. 33. Did you use it for the catch of that year only?

(Objected to as to form, and as leading.)

Ans. I think so; that is, the freezing-apparatus, not the preserving-chamber. I used that up to '65.

448 Int. 34. How did you use the apparatus shown in "No. 3, B;" where did you put the fish, and where did you put the freezing-mixture? I mean, as you used it for freezing the catch of 1859.

Ans. I placed the fish upon the racks under the pans, and the pans were filled with the freezing-mixture.

Int. 35. In the apparatus, as used in '59 and afterwards, how were the walls made, both of the freezing and of the preserving chamber?

Ans. Double walls filled with sawdust, and the space between about ten or twelve inches. The walls were formed with an outer and inner casing, secured to scantling about ten or twelve inches wide, forming a space of about ten or twelve inches, which was filled with sawdust.

Int. 36. In the apparatus in which you froze and preserved the catch of 1859, did you use any drain-pipes in either or both the two parts of the apparatus?

Ans. Only in the preserving-chambers.

Int. 37. How many fish did you freeze in 1859?

(Objected to as immaterial.)

Ans. I couldn't say exactly; about one hundred and fifty fish. About fifteen hundred pounds or twelve hundred pounds, perhaps.

Int. 38. Did you afterwards make another model of any apparatus, or part of an apparatus, for the freezing and preserving of fish; if so, when was it, and what was it?

(Objected to as immaterial as to form, and as leading.)

Ans. I partly constructed a model in 1860; that is, I didn't finish it. It was constructed something on the principle of my second patent; that is, it had the long, narrow receptacle-pans at the top, with perpendicular funnels, extending down through the chamber, connected at the top, by means of a flange, with the receptacle-pan. It didn't have bottom horizontal tubes, like my second patent, but it had a metallic floor, standing up from the bottom of the structure or wooden part of the apparatus, with the feet of the perpendicular funnels passing through the lower ends resting upon the floor of the structure. It was constructed with double metallic walls; that is, an inner wall and an outer
449 wall, with a space between at the sides, ends, and bottom. The top was intended to be covered with wood at the upper side, that is, between the pans, and it was so arranged that the perpendicular tubes descending from the top receptacle, a portion of them, some of them, passed down in the space between the walls as well as in the chamber.

Int. 39. Is that model in existence?

(Objected to.)

Ans. I think it is; I suppose it is. I have sent for it.

(Adjourned to Monday, 13th, at 9 a. m.)

(Adjourned to Tuesday at 11 a. m.)

TUESDAY, *September* 14, 1869, (resumed.)

Examination resumed:

Int. 40. Has the model mentioned in your last answer arrived in Boston since the adjournment on Friday; and, if so, will you produce or identify it?

Ans. It arrived Saturday morning. This is it, marked "Piper model No. 4."

Int. 41. When did you make, or have made, your Patent-Office model for the patent of 1862?

Ans. It was made in the month of May of that year.

Int. 42. When and where, if at all, did you first put in use for freezing and preserving fish for the market an apparatus of that construction?

Ans. In the city of New York, in the early part of the month of May, '62. It was finished then; I don't recollect when it was put in operation.

Int. 43. On whose premises, and for whose use, was it so put up?

Ans. It was put up on the premises occupied by Middleton & Carman; principally for keeping the fish I shipped to them.

Int. 44. When and where did you put in use such an apparatus for freezing and preserving fish?

Ans. In the city of St. John, N. B., in the spring of 1864. It wasn't completed till late in June.

450 Int. 45. How many seasons did you use it?

Ans. I used it in '65; did not use it in the summer of '66; but used it in the winter and spring of '67, to store some fish in that I brought down from Bathurst in the winter of '66–'7. I have used it every season since.

Int. 46. Why did you not put it in use sooner?

(Objected to as to form and substance.)

Ans. On account of the war. It was no object for me to construct any other apparatus without going to the provinces, where I could get a larger supply of salmon.

Int. 47. You have said that you froze the catch of 1860 in the apparatus shown by model "Piper, No. 3," putting the fish into the pans. Which did you find the better way of using the apparatus, that way, or the way you used it the season before; and why was it better?

(Objected to as to form and substance.)

Ans. I found putting the fish in the pans better, from the fact that there was more metallic surface radiating the cold from the freezing-mixture which operated upon the fish within the pan; whereas, in the first instance, it only operated on one side. By the second arrangement it froze the fish quicker.

Int. 48. In the specification of your patent of 1861, you state that no communication exists between the interior of the preserving-chamber and that of the vessels in which the freezing-mixture is placed; what is the practical importance of this point?

(Objected to as to form and substance.)

Ans. It is that none of the external air pass into the chamber while

performing the operation of charging the metallic vessels with the freezing-mixture, as the application of the freezing-mixture was made without disturbing the atmosphere of the chamber.

Int. 49. It was testified by Mr. Seavey that the holes which had been made in the top pan and bottom pipes of his apparatus at Charlestown improved the working of the apparatus; that before the alteration the fish put at or near the top of the preserving-chamber would not freeze as soon as those at the bottom of the chamber, and that since the
451 alteration he had found that they froze as well at the top as at the bottom of the chamber and as quick. State whether, in your opinion, from your special knowledge of this subject, any such beneficial result could take place as alleged; and state whether in practice you have found any result, and, if so, what, from having perforations in the top pan containing the freezing-mixture?

(Objected to as to form and substance.)

Ans. In my opinion, if their apparatus was properly charged, instead of the fish not freezing so quick at the top, they would freeze sooner than in any other part of their apparatus. From the fact that they had a larger area of metallic surface at the top, the top fish must necessarily partake of a greater amount of the cold radiating from that metallic surface. And in my practice, in my second patent, the fish at the top always froze quite as quick, if not quicker, than in any other portion of the chamber. I never had occasion to use pans with perforations. [It would be the last thing I should think of, or, if I ever thonght of it, I shouldn't think it worth while to make such perforations expecting to receive any beneficial results, either to expedite the freezing or in any other respect.]

(Clause in brackets objected to as not responsive.)

Int. 50. Did you ever have a perforation, or hole, or leak, accidentally made in, or about, the top pan; and, if so, what practical result followed from that?

(Objection as to form and substance.)

Ans. I have no particular knowledge of any accidental perforations being made in the top pans in my apparatus, but I have knowledge of the fact of a perforation, accidental, I suppose, being made in one of the horizontal tubes, or funnels, at the bottom; and in the other horizontal tube in the same chamber the soldering had started upon the end of the horizontal tube from one-quarter to one-third of the way around, which must have caused leakage of at least one-half of the accumulated pickle into the bottom of the chamber. The fish came out of the chamber in a rusty state, or condition, worse than any before, although those fish were well coated with gum, and were in such good condition when put in that I expected them to come out in the best order of either of the chambers that were filled last season.

452 Int. 51. In your last answer you speak of a "rusty" state or condition of the fish; please explain what you mean by the term "rusty," and what condition of the fish it indicates.

(Objected to as to form and substance.)

Ans. A yellow appearance or color on the outside, rancid; speaking in a chemical sense, it is supposed to be the absorption by the oil of the fish of the oxygen of the atmosphere.

Int. 52. What is the effect upon the fish with reference to its quality or fitness for food?

Ans. It affects the flavor in the same manner that salted food is affected by what we call being rusty, or rancid. It injures the flavor very much.

Int. 53. Since 1859, to what extent have you frozen salmon and furnished them to the market, up to the present year?

(Objected to as to form and substance.)

Ans. I increased the quantity from about four hundred pounds the first year, the season of '58, to from twelve hundred to fifteen hundred pounds the next year; I think I didn't keep much over three thousand pounds a year till I went to St. John in '64. I recollect two seasons when I had my chambers full, holding about three thousand pounds. In '64 I kept between eleven hundred and twelve hundred fish, which would be nearly twelve thousand pounds, besides what my brother kept in Camden. In 1865 I kept about eighteen thousand pounds, besides what my brother kept in Camden. In 1866 I didn't preserve any fish in St. John, but preserved about six thousand pounds in Bathurst; and since that at Bathurst and St. John about five thousand salmon; about fifty thousand pounds yearly.

Int. 54. What prices did you receive during the year that you furnished the frozen salmon to the market, prior to the present year?

(Objected to as to form and substance.)

Ans. I couldn't tell exactly without referring to the returned accounts of sales; but as a general thing, they averaged something like from fifty to sixty cents per pound after deducting expenses, transportation, and commission, previous to '64. They averaged in '64 and '65 from sixty to eighty cents currency. In '66, I think I got fifty cents.
453 In '67 they averaged me about twenty-five cents clear. The catch of '68 I've not got the returned account-sales of; but think the average is from forty to fifty cents. I speak in this answer of the catches of each year.

Int. 55. When did you first meet with competition in the market in the sale of frozen salmon; and what was the effect upon the price?

(Objected to as before.)

Ans. I met with competition in the year '66. The effect upon the price of my fish was not very great that year in consequence of my not getting my fish into the market until about the 1st of January following, and only having about six thousand pounds; the other parties having disposed of the most of theirs before my fish came in.

Int. 56. What competition in the sale of frozen salmon did you meet with afterwards, and what was the effect upon the price?

(Objected to as before.)

Ans. In the catch of '67 I met with such competition that the fish only netted me about twenty-five cents per pound, as there was about one hundred thousand pounds altogether went into the market.

Int. 57. What quantity of frozen salmon did you furnish to the market in 1867?

(Objected to as before.)

Ans. Of the catch of '67 over fifty thousand pounds.

Int. 58. What was the amount of the catch of '68 that you furnished to the market?

(Objected to as before.)

Ans. Somewhere between forty-five and fifty thousand pounds. I couldn't tell exactly.

Int. 59. What was the amount of the catch of '69 that you furnished to the market?

(Objected to as before.)

Ans. Something over fifty thousand pounds.

Int. 60. What party or parties competed with you in furnishing frozen salmon to the market in the years 1866–'67–'68?

(Objected to as before.)

Ans. Brown, Seavey & Co., the respondents, put salmon into the market in '66, and, as I have reason to believe, have done so
454 every season since. There is another party, I am informed, that put frozen salmon into the market in the year 1867.

Int. 61. Do you know Joseph H. Racey, jr., fish-dealer in the Centre Market in the city of New York? If yea, how long have you known him?

Ans. I have known him personally since February, 1868.

Int. 62. Have you ever seen any freezing-apparatus for freezing fish belonging to him? If yea, when did you first see it, and where, and who was present?

Ans. In the latter part of February, '68, I saw an apparatus for freezing and preserving fish and other articles in a cellar under Centre Market, New York City. I recollect that Mr. Racey and Mr. Gilson Carman of the firm of Middleton, Carman & Co. were present, and some of their help might have been.

Int. 63. How many apparatus for freezing fish were there in that cellar; and, if more than one, did you examine either or all of them?

(Objected to as before.)

Ans. I saw two. I partially examined them both.

Int. 64. Did you see the interior of either or both of them?

(Objected to as before.)

Ans. The doors were open so that we could see in, but we couldn't see the whole of the inside on account of *their* being stuff in them—boxes or baskets, or some such stuff.

Int. 65. With reference to the door of the cellar, where were the two apparatus situated?

(Objected to as before.)

Ans. One was situated nearly in front of the door, but on the left-hand side, the other on the right-hand side, not quite so far from the door.

Int. 66. Did you observe whether the freezer situated at the left of the cellar-door had any drain-pipes or not? And if yea, describe them, and their location in the freezer.

(Objected to as before.)

Ans. I observed a drain-pipe upon the front side. I should have said upon the front side I observed a drain-pipe upon each side of the door of the refrigerator, situated about a foot and a half above the
455 floor of the cellar. The drain-pipe proper projected out perhaps an inch or two, and then there was a perpendicular tube into which the drainage went down through the floor.

Int. 67. From what did the drain-pipes project, and from what did they lead, inside the freezer?

(Objected to as before.)

Ans. They projected through the casings of the apparatas. [I suppose they extended from the horizontal tubes inside the apparatus, to drain the freezing-receptacles, as they were coated with frost and ice.]

(Part of answer in brackets objected to.)

Adjourned to Sept. 15, at 11 a. m.

Sept. 15, adjourned to Sept. 16, at 10 a. m.

SEPT. 16, 1869—10 a. m.

Witness says that he desires to make explanation as follows:

I think I didn't give the full dimensions of the hogsheads. The dimensions I named relate to the diameter, while the length is about forty inches. The cross-pieces were to sustain the hoop in which the hooks

were placed for hanging the fish. I don't recollect particularly whether I had both hogsheads arranged so or only one.

And in answer to cross-interrogatories propounded to him by Edward C. Avery, esq., of counsel for respondents, deponent saith as follows, viz:

Cross-int. 1. In any of your experiments in artificially freezing fish did you place ice or ice and salt in the same compartment with the fish you sought to freeze?

Ans. I have put ice in in experiments, but I don't recollect ever making any experiment in freezing fish, for practical operation, where I used salt in the same box in connection with the ice.

Cross-int. 2. When first did you use ice in the manner stated in your last answer?

456 Ans. I recollect putting ice under the rack, or at the bottom of the box, like Exhibit No. 3 B, but I don't think I so used it more than on one or two occasions, as I considered it of no advantage. That was, I think, in 1859, when I first used that box. It was in the summer of '59.

Cross-int. 3. Was it before or after you made your application for your first patent that you so used it?

Ans. About six months after. It was the June following January, 1859.

Cross-int. 4. When you so used it, did you freeze any fish in it?

Ans. I think I did.

Cross-int. 5. Don't you know whether you did or not?

Ans. I froze one or two batches. I was obliged to turn the fish over.

Cross-int. 6. About how many fish? What quantity?

Ans. I don't think I froze more than a dozen fish—I don't recollect what quantity—with the ice underneath.

Cross-int. 7. Did you ever so use it before you applied for your first patent?

Ans. No.

Cross-int. 8. Did you ever use it before you applied for your first patent, that is, the box represented by No. 3 B, with the bottom of the box covered with a frigorific mixture, such as salt and ice, with the rack on which the fish were placed over that covering and in the same compartment with it?

Ans. I never did.

Cross-int. 9. Did you ever at any time so use it?

Ans. Never for any practical operations. I can't say but I might have made some experiments in that way; but I have had occasion to experience something of that nature from accidental leakage of the pickle into the chamber, coming in contact with some ice placed at the bottom of the chamber, which proved detrimental to the fish in the preserving-chamber.

Cross-int. 10. Did you ever make any practical experiments with any apparatus, however constructed, in which you used a frigorific

457 mixture, such as ice and salt, in the same chamber with the fish to be frozen?

Ans. I think I have made some experiments; but not in a chamber calculated to preserve fish for any length of time, but simply to freeze them.

Cross-int. 11. When did you make those experiments? State in detail.

Ans. I couldn't recollect. I might have made them on different occasions—several times. I never kept any memoranda of any of my experiments at any time, and I have made so many that it would be very

difficult for me to state the time in which I made temporary experiments from time to time, without being in connection with the circumstances of constructing an apparatus particularly for the purpose of such experiments.

Cross-int. 12. Did you make any such experiments before you filed your application for your first patent?

Ans. I couldn't say whether I did or not, from the fact that I kept no memoranda of experiments.

Cross-int. 13. Did you make such experiments before you used the apparatus described in your answer to eighth interrogatory?

Ans. I might have done so in my experiments of freezing water; for I used all sorts of contrivances in the shape of pails, tubs, metallic vessels, earthen vessels, etc.

Cross-int. 14. Do you mean to say that you do not remember whether you did or not?

Ans. I think it is very likely that I did; but, as I observed before, as I kept no memorandum of my experiments, I am unable to swear whether I did or not.

Cross-int. 15. With what sort of an apparatus did you so experiment?

Ans. Not in any of my apparatus constructed for practical purposes for freezing and preserving fish. I might, however, have placed some small fish, such as mackerel, in the top of the tubes in the hogshead-arrangement; but could not state positively that I did so, as I kept no memorandum of my experiments.

(Question being read again, he says:)

458 I don't see any necessity of hammering at that question.

Cross-int. 16. Have you no other answer to give to the last question?

Ans. I don't see how I can answer that question except as I have answered it before. I have no particular recollection as to what sort of contrivance I might have used if I made any such experiments.

Cross-int. 17. Do you really remember that you ever made any such experiments?

Ans. Not in particular. As I before stated, I might have done so, and very likely did.

Cross-int. 18. Did you ever claim to have discovered a process for freezing fish by covering the bottom of a box similar to Exhibit 3 B with a frigorific mixture, such as salt and ice, over which a rack was placed upon which fish were put, with pans containing frigorific mixture over the top of the fish on the racks?

Ans. I never made any such claims.

Cross-int. 19. According to the best of your present recollection did you ever freeze fish in the manner described in the last question?

Ans. I never did, not for a practical purpose.

Cross-int. 20. What do you mean by the term "a practical purpose?"

Ans. Well, I mean otherwise than simple experiments, or, in other words, I mean that I never thus froze fish to put into my preserving-chamber for future use.

Cross-int. 21. Do you deem it practicable to freeze fish in the manner indicated and then remove them to a preserving-chamber, such as you used in connection with box Exhibit 3, B, for future use.

(Objected to.)

Ans. I think that fish could be thus froze, but not so beneficially as otherwise.

Cross-int. 22. Did you ever claim to be the first inventor of such a process, and claim for it that you had found it to be the process best

calculated, under any invention of yours, to freeze or preserve frozen fish and other articles?

Ans. What do you mean by "such a process"?

459 Cross-int. 23. I mean that last described, namely, the use of a box similar to this (Exhibit No. 3, B) for freezing the fish used in the manner following, namely, covering the bottom of the chamber in which the fish are to be frozen with a frigorific mixture, such as salt and ice, over which a rack was placed on which the fish to be frozen were put, and over the fish metallic pans containing frigorific mixture, and for preserving the fish after they were frozen, the use of an apparatus similar to that of Exhibit No. 3, A.

Ans. I never made my claim at any time for freezing fish or other articles; but my claim was made for preserving them by artificial congelation, or, in other words, bringing artificial congelation to a practical purpose in the art of preserving fish and other articles, by means of the use of a freezing-mixture. Some such claims as I have just described were made in filing my caveat, as likewise in my first application for a patent under that caveat.

Cross-int. 24. Did you claim to discover or invent any process for producing artificial congelation, and preserving fish and other articles by that means, like that described in the preceding question?

Ans. Not that I am aware of.

Cross-int. 25. So far as you now know, did you either invent or use for that purpose a process corresponding to that described in cross-interrogatory 23?

Ans. I invented and used what is described in my caveat, and likewise what is described in my patent of 1861. I never used a process whereby I placed a freezing-mixture on the bottom of the freezing-chamber under the rack represented in the Model No. 3, B.

Cross-int. 26. I do not understand that you have yet answered the last question. Please give a direct answer to it.

Ans. I can't say but I might have invented something of that kind, but I never used it for a practical purpose; that is, I meant to say, by using a freezing-mixture underneath in contact with the atmosphere of the box.

Cross-int. 27. Can you say that you did invent such a process?

Ans. I never made any claim to any such invention at home or abroad.

Cross-int. 28. Did you in fact make such an invention?

460 Ans. [In my first application my patent-agent described in the freezing-box such a use of a freezing-mixture in connection with the use of a freezing-mixture in the pans over the fish. Before the issue of the patent, that was corrected, and in order to make that correction we had to produce the caveat filed in the secret archives of the Patent-Office.]

(Answer objected to, as irresponsive.)

Cross-int. 29. Cross-question 28 repeated.

Ans. If I entertained such an idea I never considered it an invention more than any ordinary idea that I might have entertained in regard to that process or any other subject.

Cross-int. 30. Is that the only answer you can give to the question that has been put to you?

Ans. I can't see why that is not sufficient.

Cross-int. 31. Prior to your filing your application for your first patent, had you ever used an apparatus of which Exhibit 3 is an accurate model?

Ans. Never.

Cross-int. 32. How long did you use an apparatus of which exhibit Piper Model No. 1 is an exact and accurate model?

Ans. That apparatus was only used on an occasion in freezing some haddock and small cod-fish, together with a sculpin and a lump-fish; and was in use only about from one to two weeks, after which no further use was ever made by me for freezing-purposes of that apparatus.

Cross-int. 33. You used it simply for the purpose of experiment, then, did you?

Ans. I did.

Cross-int. 34. Where did you place the fish in that apparatus?

Ans. The fish were put into the interior compartment, the U-shaped box.

Cross-int. 35. How were they so placed?

Ans. Just laid in, right down, one on top of another; side by side, and some on top, I suppose. I did not have more than a half-dozen fish.

Cross-int. 36. What time of year was it?

461 Ans. Early in the spring. I think about the 1st of April. It might have been in March that I put them in.

Cross-int. 37. Did you ever use ice in the interior with the fish in that apparatus?

Ans. I don't think I ever did.

Cross-int. 38. Do you know that you did not?

Ans. I am very sure that I did not.

Cross-int. 39. During what period did you use an apparatus of which Piper model No. 2 is an exact model?

Ans. I used that from some time in the month of June, 1858—the latter part of June—until some time in December following. That is all.

Cross-int. 40. Did you never place ice, alone or commingled with anything else, in any part of that apparatus excepting the tubes?

Ans. I don't think I ever did—that is, anything for a freezing-mixture.

Cross-int. 41. What did you place it there for?

Ans. Place what there for?

Cross-int. 42. Ice.

Ans. I have no recollection of using any ice in that apparatus only in connection with salt and put into the tubes.

Cross-int. 43. What do you mean by saying, in answer to cross-interrogatory 40, "I don't think I did—that is, anything for a freezing-mixture?"

Ans. I meant this: I had put some other substance within the chamber besides fish, but nothing in the shape of ice, or of ice and salt?

Cross-int. 44. Why didn't you say in answer to that question that you never had?

Ans. That I never had what?

Cross-int. 45. Don't you know what was asked of you in cross-interrogatory No. 40?

Ans. I do.

Cross-int. 46. Now, please answer cross-interrogatory 44.

Ans. I think the question was whether I had put anything else in there but salt and ice besides the fish, if I understood it right. My
462 answer to that question and all questions on that subject is, that I put nothing into the hogshead in the shape of ice or salt, but I recollect having some charcoal put into the bottom of one of the hogsheads—the one in which I kept the fish preserved. I likewise had pul-

verized charcoal, about an inch in thickness, under the head or cover, held there by a lining of cloth. I likewise had a small casing extending from the top of the hogshead, for the purpose of having a space to admit the thermometer through the head down into the casing, inside the casing. That's all, with the exception that I have before described.

Cross-int. 47. For how long a period did you continue to use the apparatus constructed according to Model No. 2?

Ans. From the month of June, '58, until the December following.

Cross-int. 48. About how many fish did you freeze during that period in that apparatus?

Ans. I think just forty-five. It is between forty and fifty anyhow.

Cross-int. 49. After those fish were frozen, what did you do with them?

Ans. I don't think I coated those at that time, but I recollect while here in Boston that I coated some of them (that is, I coated one, and how many more I don't recollect) with ice, by applying water to them in a cold day. This was in December, '58, or Jan., '59, while I was frozen up in the dock and could not get out.

Cross-int. 50. Did you coat any of the fish that were frozen in '58 with anything but ice?

Ans. I don't think I did. I'm very sure I didn't use any gum that year.

Cross-int. 51. Did you coat any of the fish frozen in the hogshead apparatus until they were removed to Boston?

Ans. I think not.

Cross-int. 52. Prior to the filing of your application for your first patent, had you coated any fish with gum or any other substance than ice?

Ans. I think I did not.

463 Cross-int 53. What assistants did you have during the year '58?

Ans. I had my brother Silas.

Cross-int. 54. When did he first commence working with you, and what apparatus did you use?

Ans. He assisted me in rigging up the hogshead-arrangement, which was, I think, the first of June, '58.

Cross-int. 55. Is the model No. 2, which you present here, an exact model of the apparatus you used, in every particular?

Ans. It's as near the thing as could be constructed in the shape of a model, except what I have previously stated of the rig for the thermometer, and the charcoal-lining under the head.

Cross-int. 56. After the fish were frozen, how were they stowed away for preservation?

Ans. I placed them, in the first place, with their heads downward, resting on the lower head of the hogshead, and when I finally filled it I stowed some of them tails downwards, so as to get as many in as possible.

Cross-int. 57. Did you fill the preserving-hogshead?

Ans. I did.

Cross-int. 58. What became of the hogshead-arrangement?

Ans. I couldn't say. I know it was taken out of the cellar; I think in '59, as that portion of the cellar, according to my best recollection, was converted into an ice-house.

Cross-int. 59. Then you did not use the hogshead-arrangement in '59 or at any time since?

Ans. No, only in '58.

Cross-int. 60. At the time you filed your application for your first patent, had you, or any one else to your knowledge, constructed any apparatus of which Exhibit No. 3 is an exact model?

Ans. Nothing but the hogshead-arrangement I have already described that approximated.

Cross-int. 61. Then you had not made any apparatus of which Exhibit No. 3 is a model at the time you filed your application for your first patent?

464 Ans. Nothing but the hogshead-arrangement for practical operation.

Cross-int. 62. Why won't you answer the two preceding questions directly "yea" or "nay?"

Ans. I say I never had myself or any one else to my knowledge.

Cross-int. 63. Had you known of any one using, for the purpose of freezing fish at the time you filed your application for your first patent, any apparatus, large or small, of which Exhibit No. 3, B is an exact model?

Ans. I never knew or heard of any apparatus being constructed for freezing fish and other articles prior to my invention for that purpose, large or small.

(Objected to as irresponsive.)

Cross-int. 64. Question repeated.

Ans. I did not.

Cross-int. 65. When first did you construct an apparatus of which No. 3, B is an exact model?

Ans. I constructed a freezing-arrangement in 1859, the early part of the summer, substantially the same as that, but it differed in some little respects; for instance, the sides and ends of the metallic pans were of wood, in place of their being entirely metallic. I didn't have one large cover hung with hinges, but in place thereof I had boards lying crosswise of the box covering the pans, and we used to use quilts or coverlets over the top of those boards to protect them somewhat from the external warm air. Instead of a rack, as is in the bottom of this model, I simply had slats of wood, like barrel-staves, that we placed the fish upon.

Cross-int. 66. Now, will you be kind enough to answer the question when, if ever, you first constructed a freezing-apparatus of which Exhibit No. 3, B is an exact model.

Ans. I can't answer it any nearer than what I have. You can infer what you please from the answer.

Cross-int. 67. Did you ever see an apparatus of which Exhibit No. 3, B is an exact model?

Ans. Nothing nearer than what I have described, or nothing
465 but what I have described, prior to my construction, relating to both the model and the apparatus that I constructed.

Cross-int. 68. Did you ever see one after the time named in your last answer?

Ans. Nothing constructed on that principle exactly.

Cross-int. 69. At the time you filed your application for your first patent, had you ever frozen any fish in any apparatus of which Exhibit No. 3, A is an exact model?

Ans. I have already stated that I froze some haddock and small codfish in my first Exhibit No. 1, as likewise I have already stated that I froze and preserved fish in the hogshead-arrangement; and I presume that I froze fish in the freezing-apparatus described in my application, before I froze any in the preserving-apparatus; but I am not positive but what I might have frozen in both at or about the same time, as I

usually used the preserving-apparatus when it was first charged up for that purpose for one batch; but after having frozen fish once placed in the preserving-chamber, I found it was not so well to put into the preserving-chamber any unfrozen fish, as it had a tendency to soften those already there which were frozen.

(Answer objected to as irresponsive.)

Cross-int. 66. Question repeated.

Ans. No.

Cross-int. 67. When did you first construct an apparatus of which Exhibit No. 3, A is an exact model?

Ans. I constructed an apparatus which was calculated to be upon the exact plan of that model, in the latter part of May and first of June, 1859.

Cross-int. 68. You have not yet answered the question which I put to you. When first did you construct an apparatus of which that is an exact model?

Ans. Well, there's no such thing as perfection in this world. This model is calculated to represent the model in the Patent-Office, and my apparatus constructed in the spring of '59 was as near the thing as we were capable of making it; but after constructing the apparatus, we divided it in the centre by a partition-wall, so as to form two compartments.

Adjourned to 17th, at 10 a. m.

466 Resumed.

Cross-int. 69. Do you now remember any time prior to the first of January, 1860, when you actually froze fish in the apparatus described in your last answer?

Ans. As I had not finished the description in the previous question, I will do so prior to answering this present question.

The preserving-apparatus last referred to had no large cover hung upon hinges like the original model, neither did it have a top-casing like the present model No. 3, A, as we only had loose pieces of board placed on top of the saw-dust. The apparatus had tin tubes passing down through one corner of each chamber about two inches in diameter, for the purpose of inserting a thermometer. I think I have already described the general arrangement of the preserving-apparatus now alluded to.

We froze some fish in this apparatus the first year it was constructed, I think, but I am not positive; that is to say, in 1859.

Cross-int. 70. If I rightly understand you, at the time you made application for your first patent you had never constructed, seen, or used any apparatus corresponding in its arrangement with the model No. 3, and had never frozen any fish in any apparatus such as you described in your application?

Ans. In answer to that question, I think I must say that you misunderstood me.

Cross-int. 71. In what particular do you think I misunderstood you? You say you had not constructed any apparatus such as that shown by Exhibit No. 3, A, nor had you frozen any fish in any apparatus of which that is a model. You have also said that you did not construct any apparatus like Exhibit No. 3, A until some six months after you filed your application for a patent.

Ans. I want those questions put singly. I can't otherwise remember from one question to another without having the question continually read over.

So far as concerns the freezing arrangement No. 3, B, I did state that I had never frozen any fish in just such a constructed apparatus as that, and had only frozen fish in the temporary-Exhibit No. 1, and had frozen and preserved fish in the hogshead-arrangement No. 2 at the time of my application for my first patent.

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Cross-int. 72. Then it is true, is it not, that at the time you filed your application for your first patent you never had frozen fish in the manner described in that application?

(Objected to because the witness has again and again stated that he had not, prior to the application for his first patent, frozen fish in an apparatus such as model No. 3, B, represents, and has again and again stated in what apparatus he had frozen fish before that time; and because the question confounds identical similarity and substantial similarity, and so tends to mislead the witness. And the counsel for complainant requests the counsel for defendant to inform the witness whether by the words "in the manner described in that application" he means identically in that manner, or substantially in that manner.

Counsel for respondent deems the question itself sufficiently certain to give the witness the information desired.)

Ans. I think I have stated several times that I had never frozen any fish in the identical apparatus for freezing, like "No. 3, B," prior to my first application in January, 1859. I can't remember, exactly, the manner that was described in that application; I simply state facts.

Cross-int. 73. Had you ever frozen fish, at the time you made that application, in any apparatus having pans like those shown in model No. 3, B?

Ans. I can't say that I ever froze any, but I kept some preserved in a frozen state, in two or three boxes, on board of my vessel, when I brought them to market in Boston. I would, however, take occasion to observe that I used no freezing-mixture at the bottom of those boxes, but that I had, I think, some loose snow placed in the bottom of them.

Cross-int. 74. In your last answer you refer to the fish that you say you brought to Boston, in the winter '58–'9, do you?

Ans. I refer to the fish I brought to Boston in the winter of 1858, in December.

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Cross-int. 75. Was more than one tier of those fish packed in each box?

Ans. I think there was.

Cross-int. 76. Were they packed in snow?

Ans. There was snow in the bottom of the box; I think that was all—laid upon snow.

Cross-int. 77. Had you, in fact, ever frozen fish prior to the application for your first patent, in the manner described in your application?

(Counsel for complainant inquires whether the question means identically in that manner, or substantially in that manner, and whether by the application for the patent is meant the specification as first filed, or the specification as corrected and making part of the letters-patent of 1861.

Counsel for respondents requests an answer to the question in the form in which it is put, leaving it for witness to say to which of the specifications he refers, in answer to the question.)

Ans. I couldn't answer that question without referring directly to the patent, and it would take me some time to examine it to decide.

Cross-int. 78. You say that you used an apparatus substantially like Exhibit No. 3, B, in the year 1859; were you not obliged, in using it

during that year in the manner in which you have said you did, to turn the fish over from time to time, in order to freeze them on both sides?

Ans. I think I stated that when I used ice underneath the fish I was obliged to turn the fish over while I used the ice underneath; or, at least, I recollect of having done so; but whether it was upon every occasion or not I am unable to say.

Cross-int. 79. In fact, did not the fish which you attempted to freeze in the apparatus you used in 1859, whether you used ice in the freezing-chamber or not, require turning in order to have them thoroughly and quickly frozen?

Ans. That would depend entirely upon how long the apparatus had been charged up previous to putting in the fish to be frozen; and if ice were placed in the bottom, and been subjected to the influ-
469 ence of the freezing-mixture for a sufficient length of time to be charged with a degree of cold, say from 15° to 25° above zero, then the fish put in there, and the same freezing-mixture still applied in the pans at the top, would become frozen, perhaps, quite as quick upon the under side as the upper side.

(Question being repeated, witness says:)

If you don't think I have answered the question I will say, if the apparatus had been charged for twelve hours previous to putting the fish in there would be no occasion of turning them over in order to freeze both sides.

Cross-int. 80. If the fish had been put on to the strips of board in the bottom of the box, (as you have said you placed them when you used substantially the apparatus corresponding to model No. 3, B,) there being no ice in the bottom of the box, and the pans on top being filled at the same time that the fish were put in, could you readily freeze the fish through without turning them over? Did not the freezing-mixture contained in the pans operate on one side of the fish and not on the other?

Ans. That question must be altered. It assumes something that is not a fact. I never stated that I placed fish in the bottom of the box for the purpose of freezing them. I don't admit that the strips were on the bottom of the box—they rested on the bottom, but were somewhat suspended, similar to the rack in the model.

If the fish were placed into the box according to the directions of the specification of the patent they would become frozen thoroughly through in about twenty-four hours.

The freezing-mixture would operate more on the upper side than the lower side in consequence of the upper side being as near the pan at the top as possible; consequently, that portion of the fish nearest to the metallic surface in the freezing-vessel would become frozen soonest.

Cross-int. 81. I don't understand that you have answered my question, which I now repeat: If you put the fish onto the slats of wood, as stated in your answer to 65th cross-interrogatory, there being no ice in the bottom of the box, would the fish be readily frozen through without turning them over?

470 Ans. They would if they were put in in small quantities.

Cross-int. 82. What do you mean by "small quantities?"

Ans. I mean where the fish are placed in, leaving a suitable space between them, so that the cold, radiating from the surface of the pans, would not be obstructed by the fish being close together.

Cross-int. 83. Did you, in fact, ever freeze any fish in the apparatus described in the specification annexed to your first application for a patent used in the manner described therein?

Ans. I've answered that question several times, I think—as much as three times, I think.

I froze fish in the apparatus described in my application of 1859 in the year 1859, but not with the use of any freezing-mixture at the bottom of the box.

Cross-int. 84. Then you did not use it in the manner described in the specification annexed to your first application?

Ans. I don't recollect exactly what was the manner described in that application, not having a copy of the first application.

Cross-int. 85. Don't you remember that, in that application, you described the manner of using your apparatus to be by covering the bottom of the box used for the freezing of fish with a frigorific mixture, and placing the fish to be frozen on a rack over that, and pans on the top of that?

Ans. I think I recollect something in regard to it from the fact that some alteration was made at the time, or just before the time, that my patent finally issued, as we had to refer to the caveat in regard to it. I mean some alteration was made in the specification.

Cross-int. 86. Do you believe it to be practicable to freeze fish in an apparatus constructed after model No. 3, B, if the bottom of the box should first be covered with a frigorific mixture of ice and salt, the fish placed upon a rack over that, and then covered with pans, as shown in said model?

Ans. I do, so far as regards freezing the fish is concerned.

Cross-int. 87. Did you ever do it?

Ans. Not in practice.

Cross-int. 88. You, in your last answer but one, used the ex-
471 pression "so far as the freezing the fish is concerned." What do you mean by that?

Ans. The freezing of the fish. I mean that they would freeze with such an arrangement.

Cross-int. 89. You never used the method of freezing described in your answer to 65th cross-interrogatory after the year 1859, did you?

Ans. I don't think we did. I am not positive, but that is my impression.

Cross-int. 90. Why did you abandon it?

Ans. I abandoned it because I entertained a new idea, that I supposed would be attended with less labor, and, as we had to take it away from where it was located, and rig up something in another part of the cellar, I concluded to construct the freezing-arrangement and use pans with covers instead of the previous arrangement to put the fish in.

Cross-int. 91. Do you mean to say that you used the same freezing-apparatus, with only the difference that the pans had covers to them?

Ans. I mean to say that I constructed pans with covers to put the fish in, instead of using the other pans; or, in other words, dispensing with the use of that, and constructing a different arrangement.

Cross-int. 92. How long did you continue to use that method of freezing fish?

Ans. That arrangement—the last one I spoke of—was used up to the summer of 1865. My brother used them in '64 and '65.

Cross-int. 93. How many fish did you put in a pan?

Ans. Three of the ordinary size, averaging about three pounds.

Cross-int. 94. Did you cover those pans with ice and salt?

Ans. Yes.

Cross-int. 95. Did you find that method preferable to the one that you previously used?

Ans. I found it more convenient and less labor.

Cross-int. 96. Was it preferable in no other respects?

Ans. It would keep the fish in rather better shape in the pans.

472 Cross-int. 97. Didn't it freeze them quicker and more evenly?

Ans. I think we could in large quantities.

Cross-int. 98. Did you usually coat the fish that you froze in these pans?

Ans. I think I did.

Cross-int. 99. Did you ever construct an apparatus for use after the model Exhibit No. 4.

Ans. Not exactly.

Cross-int. 100. In what particular did it differ?

Ans. I constructed an apparatus in New York which combined the principle of narrow horizontal pans, with perpendicular tubes descending therefrom to the bottom of the chamber; and I present this model mainly to show that I did not get the idea of an apparatus constructed in A. & E. Robbins' store-house, on Beekman street, adjoining the store-house where I put up an apparatus in the early part of May, 1862.

Cross-int. 101. If I rightly understand you, then, the nearest approach of any apparatus which you have constructed to model No. 4 is that erected for Middleton, Carman & Co., or W'm M. Rogers & Co., in '62. Is that so?

Ans. That is so, I think.

Cross-int. 102. That had no metallic lining such as model No. 4 has, had it?

Ans. As I before stated, I produce this model simply to show that I was not anticipated in the construction of an apparatus at A. & E. Robbins' store-house in New York, combining the arrangement of horizontal top pans and perpendicular tubes connected together by a flange at the bottom of the pan.

(Answer objected to as not responsive.)

Cross-int. 103. Cross-int. 102 repeated.

Ans. I don't know whether they put a metallic lining to it or not. It hadn't when it was first built—that is, when I left it.

Cross-int. 104. Did you ever freeze any fish or anything else in any apparatus constructed precisely like No. 4?

Ans. I never did.

Cross-int. 105. When did you go to Europe?

473 Ans. I think I left Boston the 28th day of November, 1860, and arrived in Europe in December.

Cross-int. 106. Before you left for Europe had you been informed by the Patent-Office that your application for a patent had been rejected?

Ans. Of course I had. I don't recollect the exact time it was rejected, as I've not got the letter of rejection.

(Objection continued.)

Cross-int. 107. Had you also been informed that one of the grounds upon which your patent was rejected was want of novelty in the alleged invention.

(Objected to as opening new matter.)

Ans. That would be a natural consequence of a letter of rejection.

Cross-int. 108. Were you, in fact, informed that that was one of the grounds?

(Objected to as above.)

Ans. Yes.

Cross-int. 109. Did you go to Europe in consequence of the action of the Patent-Office in rejecting your application for a patent?

(Objection continued.)

Ans. Mainly.

Cross-int. 110. At the time you went to Europe, had you heard of or seen the patent of Benjamin & Grafton or the specification thereof?

(Objection continued.)

Ans. I carried a certified copy, which was sent me by the U. S. Patent-Office, with me.

Cross-int. 111. When did you receive that copy?

(Objection continued.)

Ans. Not long after the notification of the rejection of my application, as I soon sent to the Patent-Office for a copy of the specification and drawings of the English patent.

Cross-int. 112. In what year did you receive that notification?

Ans. I think some time in 1859.

474 Cross-int. 113. Did you receive a copy of the drawings of the Benjamin & Grafton patent?

(Objection continued.)

Ans. No. We received a copy of the specification, with the information that there were no drawings in the Office.

Cross-int. 114. Was one of the purposes you had in going to Europe to see the apparatus and the working of the apparatus described in the Benjamin & Grafton patent?

(Objection continued.)

Ans. I had no idea or expectation of seeing any apparatus, as I felt satisfied from the copy of the specification that there was no such apparatus in existence in Europe or anywhere else.

(Answer objected to as not responsive to the question.)

Cross-int. 115. Cross-interrogatory 114 repeated.

(Objection continued.)

Ans. Well, I will say, simply, no.

Cross-int. 116. What did you go to Europe for, then?

(Objection continued.)

Ans. It was one part of my business to see these parties, and to ascertain the fact as to whether any such apparatus was built and whether any business was ever done with it.

Cross-int. 117. Did you ever see any drawings of the apparatus described in the Benjamin & Grafton patent?

(Objection continued.)

Ans. I never did.

Cross-int. 118. Did you see any freezing-apparatus while you were in Europe?

Ans. I did not.

Cross-int. 119. Did you see any apparatus claimed to be constructed after the Benjamin & Grafton patent?

(Objection continued.)

Ans. I did not.

Cross-int. 120. Have you not stated that you did see an apparatus in Europe, used for preserving animal and other substances, by placing them in a close chamber, and cooling the atmosphere of that chamber, and applying frigorific mixtures in metallic vessels so as to prevent

475 the atmosphere of the preserving-chamber from coming in contact with the frigorific mixture, or words to that effect.

(Objection continued.)

Ans. Never.

(Adjourned to 18th, at 10 a. m.)

(18th September, adjourned to 20th, at 10 a. m.)

(20th, adjourned.)

Cross-examination resumed:

Cross-int. 121. When you used the apparatus corresponding with Model No. 3, B, how often did you charge the pans in order to thoroughly freeze the fish through?

Ans. We usually charged the pans once in twelve hours.

Cross-int. 122. How many hours did it take to freeze fish in that apparatus, taking the average run?

Ans. I think on an average about thirty-six hours; when we had a small quantity not so long, and when we had a very large quantity, it might take longer.

Cross-int. 123. What was the greatest number of fish frozen by you at any one time in that apparatus?

Ans. It would be very hard to say, but, for a guess, I might have had between thirty and forty in at one time.

Cross-int. 124. You have said that when you used that apparatus you did not use any drain-pipe in connection with it. How did you dispose of the drainings?

Ans. We had to dip out the pickle.

Cross-int. 125. Did you dip the pickle out of each pan, or empty the pan?

Ans. We dipped it out. Those pans were two feet by three feet.

Cross-int. 126. During the time that any one batch of fish was in that apparatus in process of freezing, were any of the pans taken out for any purpose?

476 Ans. We generally took out one pan when we put in or took out the fish, and as we put in or took out the fish we slid the pans along as occasion required.

Cross-int. 127. How were the fish placed on the rack to be frozen; in contact with each other or otherwise?

Ans. They were not in contact with each other, as they would freeze together if they were. Sometimes we would place them on their backs, in which case we would put barrel-staves between them to keep them straight and prevent them from freezing together. Sometimes we would lay them upon the side, not in contact with each other.

Cross-int. 128. When they were placed on their sides, and the freezing-chamber was filled full with the fish, did you not find it necessary to turn the fish in order to freeze them through?

(Objected to.)

Ans. We didn't fill our chamber with fish at any time, but it would be nearer full when the fish were placed upon their backs than when they were placed upon their sides, as, of course, we never laid in but one tier at a time.

Cross-int. 129. My question contemplated only this, that the freezing-chamber had in it as many fish as could be laid in one tier upon their sides—that's what I meant by "full." Now, in such cases did you not find it necessary to turn the fish in order to freeze them thoroughly and evenly on both sides? Did you ever do so?

(Objection continued.)

Ans. I have already stated that I did so upon one or more occasions, but the fish would become thoroughly frozen in any manner that I did place them in the chamber without turning them over; and whenever I did turn them over I am not able to say but what they might have been frozen thoroughly through in the same length of time if they had not been turned over, as we generally run our freezing-chamber right

straight along, so that it was kept charged up previous to putting in a new batch of fish.

Cross-int. 130. If the freezing-chamber had not been charged up previous to putting in a batch of fish, would it have taken any longer time to have frozen the batch put in?

477 (Objected to as to form and substance.)

Ans. I suppose it would take a little longer. That is my impression. I am not positive from experiment. I never timed it to know.

Cross-int. 131. Prior to 1865, if I rightly understand you, your practical working was thus: first, freezing the fish in small quantities, each fish separated from the other, and, after freezing them, preserving them frozen in another apparatus, different from that in which they were frozen; was it so?

Ans. I have already stated how I froze my fish, and how I put them into the chambers; if you wish me to state it over again, I can do so.

Cross-int. 132. Will you please answer the last question put to you, directly yea or nay?

(Objected to as to form and substance.)

Ads. I've got too much sense to do so. It don't admit of such an answer.

Cross-int. 133. Is it not true that prior to 1865 you froze your fish in a different apparatus from that in which you preserved them after they were frozen? Will you answer this question, yea or nay?

(Objected to, as witness has already stated what his practice was in regard to freezing fish, and it is impossible for him to answer this question directly, yes or no.)

Ans. There is the same objection as to the last question, that it doesn't admit of being answered yea or nay.

Cross-int. 134. Then you can't state, can you, that you generally froze your fish in an apparatus distinct from that in which you preserved them after they were frozen, prior to 1865, by simply saying "yes" to the 133d cross-interrogatory.

(Objected to, as witness has never said that he couldn't state how he "generally" froze his fish prior to 1865.)

Ans. What do you mean by an apparatus "distinct"—a different apparatus from that in which I preserved them, or such as I have already described?

Cross-int. 136. I mean by a distinct apparatus one mechanically different in construction, or separate, and where the process of freezing was done by itself. Now, will you answer the question?

478 (Objected to on all the grounds heretofore stated.)

Ans. With the exception of the hogshead arrangement, (which I used in the summer of '58,) as a general thing I froze my fish in a differently-constructed apparatus from the preserving-apparatus, as I have already shown in my testimony. As to the hogshead-arrangement, I generally froze in one hogshead and preserved in another.

Cross-int. 137. You deem it essential in freezing fish for market to have the fish separate, and not adhering to each other, do you not?

(Objected to.)

Ans. Yes.

Cross-int. 138. Were you ever enabled to freeze them separately, where more than one fish were put in, by the apparatus represented by Model No. 1?

(Objected to.)

Ans. I don't recollect freezing less than half a dozen in that. I never used it but once. I charged it up once, and kept it charged up for a week or ten days, with some small cod-fish and haddock, and I recollect putting in two small fish, a sculpin and a lump-fish, after; but whether it was after the cod and haddock were frozen or not, I don't remember. I don't recollect particularly whether they were frozen separate or not. The fact is, the fish were taken out by another party than myself, in my absence, and I never learned whether they stuck together or not.

Cross-int. 139. In the apparatus represented by Model No. 2, were your fish all evenly frozen, so as to be kept, after they were stowed away, "sweet and palatable" in every part, or not?

(Objected to as to form and substance.)

Ans. I exercised my palate on two or three of them with entire satisfaction, one of which I took back from Boston to Camden on my return in the schooner, and had it cooked, I think, in the month of March. We had a salmon-dinner, and the guests all pronounced it very good.

Cross-int. 140. Haven't you said that you did not freeze the fish sufficiently in that apparatus to preseve them sweet, but that
479 some of them, or some portion of them, or some portions of some of them, were "shrivelled," and unpalatable to the taste?

(Objected to.)

Ans. Not that I am aware of.

Cross-int. 141. Was that the fact with reference to some of the fish frozen prior to January 1st, 1859?

(Objected to.)

Ans. Some of those that I froze first were not entirely perfect in appearance, one of which we had cooked on board the schooner, which was sufficiently palatable to be all eaten without any part being thrown away except the garbage, etc.

Cross-int. 142. My question was, whether some of the fish frozen prior to January 1st, 1859, after being kept awhile in the frozen state, did not become "shrivelled" and unpalatable to the taste? As I understand it, you have not answered the question; will you do so now?

Ans. They are liable to unless they were coated. Some of them did.

Cross-int. 143. How did you place the fish in the pans when you used that method of freezing, as stated in your previous testimony; how many in a pan, and where were they placed?

Ans. We usually put three in a pan, of ordinary size, placed them on their backs, and generally a thin piece of board, shingle, or something of that kind, between them, to prevent their freezing together.

Cross-int. 144. If I understand you, these pans were placed in a wooden box, the sides and tops covered with a freezing-mixture, and the pickle flowing up against the bottom; was that so?

Ans. That's the way I did it, according to my best recollection.

Cross-int. 145. About how long did it take to freeze the fish in these pans?

Ans. About the same as in the arrangement I used in '59; from twenty-four to thirty-six hours, and sometimes, when not properly attended to, forty-eight hours.

Cross-int. 146. After the fish were frozen in the pans they were
480 taken out and placed in the preserving-chamber to be kept, were they not?

Ans. They were.

Cross-int. 147. Did you continue to use this process of freezing in the pans down to and including the year '65?

Ans. We used it while I was there including the summer of '60, '61, '62, and '63, and I understand my brother Silas used them in '64 and '65.

Cross-int. 148. In the apparatus which you superintended the erection of in New York, there were two compartments, were there not?

Ans. You allude to the apparatus of May, '62, I presume; that had two compartments.

Cross-int. 149. Was there any difference in the internal construction of those compartments?

Ans. There was.

Cross-int. 150. State what the difference was.

Ans. One compartment had but six vertical tubes, which were not tapering, while the bottom horizontal tubes that they connected with were placed under the floor of the chamber; while the other compartment had eight vertical tubes which were tapering, and the horizontal tubes that they connected with it at the bottom were a few inches above the floor of the chamber.

Cross-int. 151. Did you make any changes, or alterations, or cause any to be made, or know of any being made, in that apparatus in New York, either in the plan of construction, or in the construction itself, at any time?

Ans. I think there was some alteration made in the latter part of 1862, with regard to the drain-pipes, but do not recollect whether I superintended the alteration, or only suggested it.

Cross-int. 152. Were both compartments finished, completed, at the same time?

Ans. I think so. They were both finished before the doors were made.

Cross-int. 143. What, if any, money have you paid George W. Wingate, of New York, either by yourself or by any one acting for you?

(Objected to.)

481 Ans. I have not paid him any money, and am not aware that any one else has on my account. I expect, however, to have to pay him some money, when I get his bill, as an expert and witness.

Cross-int. 154. Same question as to Daniel S. Riddle?

(Objected to.)

Ans. I think I have paid him, altogether, about thirty dollars at different times.

Cross-int. 155. Do you expect to pay him any more?

(Objected to.)

Ans. I do.

Cross-int. 156. What, if any, money have you paid to Peter H. Miller?

(Objected to.)

Ans. I don't recollect exactly, but about what I considered would be his legal fees for travel and attendance. I recollect, however, that I paid him two dollars or thereabouts for his attendance the last time we were taking testimony in New York, but he was not put onto the stand.

Cross-int. 157. What connection in business is there between yourself and your brother Silas?

(Objected to.)

Ans. Nothing more than that he is in my employ as clerk, or agent, or both.

Cross-int. 158. Have you ever been partners in the business of freezing fish; if so, when?

(Objected to.)

Ans. I gave him half the profits in Camden, when we first rigged up, as he helped me construct the works there on his premises, and he attended to it principally.

Cross-int. 159. Have you superintended the erection of any apparatus in New York since 1862; and, if so, when?

Ans. I have not.

Cross-int. 160. Have you known of, or authorized the erection of, any since that time?

Ans. Yes; I granted a license to a party. On Dey street. I have seen it.

482 Cross-int. 161. To whom did you grant the license, and when?

Ans. To Gilson Carman, of the firm of Middleton, Carman & Co., in 1866, I think.

Cross-int. 162. You say you have seen the apparatus that he has constructed. How large is it?

(Objected to.)

Ans. I never measured it.

Cross-int. 163. About how large was it?

Ans. I can't tell. The apparatus was divided into two or three chambers, I should think; perhaps about thirty feet long and ten or twelve feet wide. It is mere guesswork.

And in answer to direct interrogatories resumed by Jabez S. Holmes, esq., of counsel for complainant, deponent saith as follows, namely:

Int. 68. You finished your answer to 15th direct interrogatory by saying that after you had frozen, thoroughly, fish in the freezing-hogshead, you removed them to the other, or preserving-hogshead, "which was filled in the same manner with the freezing-mixture." State in what manner the freezing-mixture was used in the preserving-hogshead.

(Objected to as not open upon re-examination of witness.)

Ans. The tube was filled with the freezing-mixture in the same manner as before described.

Int. 69. Look at your answer to direct interrogatory 43, and state if you desire to make any correction.

Ans. I should substitute W. M. Rogers & Co. for Middleton & Carman, as that was the name of the firm at that time.

Int. 70. Look at 47th direct interrogatory and answer, and say if you desire to make any correction.

(Objection continued as to original 47th interrogatory.)

Ans. The question itself should be corrected by the one that made it, as it is mixed up. I probably caught the latter part of the question in connection with 1860, which refers to putting the fish into the pans, and answered accordingly; and the words "shown by

483 Model No. 3, must have escaped my hearing, as I am quite hard of hearing.

(Answer objected to.)

Int. 71. Look at your answer to cross-interrogatory 93, and make any correction if you desire to do so.

Ans. It should be three fish in a pan, averaging ten pounds or more.

ENOCH PIPER.

Deposition of Eliza Piper, taken, subscribed, and sworn to before N. Austin Parks, examiner.

SEPT. 18, 1869.

ELIZA PIPER, being duly sworn, doth depose and say, in answer to interrogatories propounded to her by Causten Browne, esq., of counsel for complainant, as follows:

Int. 1. State your name and residence.

Ans. Eliza Piper; residence, S't John, New Brunswick.

Int. 2. Are you connected in family with Mr. Enoch Piper, the complainant? If so, how?

Ans. I am the wife of his brother.

Int. 3. When Mr. E. Piper lived in Camden, Maine, where did you live?

Ans. In the same place.

Int. 4. Do you remember any of his first experiments in the construction of apparatus for freezing and artificially preserving fish, etc.?

Ans. Yes. I recollect the hogshead arrangement.

Int. 5. At the time he got up that, in what part of Camden was he living, and in what part were you living?

484 Ans. He lived at Rockport, and I at Camden village. It was all one town.

Int. 6. Can you identify a model of what you call the "hogshead arrangement?"

Ans. Yes, sir; that is it, (referring to Piper Model No. 2.)

Int. 7. Did you see the apparatus represented by model No. 2, used by Mr. Piper for freezing and preserving fish?

Ans. I did.

Int. 8. State how he used it for that purpose.

Ans. He filled the space around with sawdust, and suspended the fish in the hogshead in which are the cross-pieces, until they were frozen, and then removed them to the other hogshead for future keeping.

Int. 9. What, if anything, did he put into the apparatus to freeze with, and where did he put it?

Ans. He put ice and salt into the tubes.

Int. 10. In what year was that?

Ans. In '59.

Int. 11. Did Mr. Piper afterwards come to live with you in Camden village?

Ans. Yes, sir.

Int. 12. When was that?

Ans. In 1859. He lived with us a part of the time in 1859. He made a permanent residence with us in 1860.

Int. 13. Do you remember any other apparatus which Mr. Piper got up before coming to live permanently with you in 1860?

Ans. He got up that one with four perpendicular tubes while living with us. I refer to Piper Model No. 3.

Int. 14. At what time in 1860 did Mr. Piper take up his permanent residence with you?

Ans. In the spring. I couldn't tell you exactly the day.

Int. 15. Do you know of Mr. Piper's using the apparatus represented by the models marked No. 3?

Ans. I do.

Int. 16. How did he use them? Where did he put the freezing-mixture, and where the fish?

485 Ans. At first he laid the fish on here, (pointing to the racks, model No. 3, B,) and put the freezing-mixture in the pans. Afterwards he put the fish in the pans and had covers made to the pans; put the pans into this box, (B,) and covered it with freezing-mixture.

Int. 17. Did he use these different arrangements the same fishing season, or different fishing seasons?

(Objected to as to form, and as leading.)

Ans. Different fishing seasons.

Int. 18. Did Mr. Piper go abroad while you lived at Camden? If so, in what year, and what time of year?

Ans. He did; in November, 1860.

Int. 19. You have described three different arrangements which he used for freezing fish; were these before or after he went abroad?

Ans. Before.

Int. 20. In what season of the year did he put the fish in and freeze them in these machines respectively?

Ans. In the latter part of June, and first part of July.

Int. 21. The arrangement in which the fish were placed in the pans was, if I understand you, the last one of the three before he went abroad.

Ans. Yes.

Int. 22. In what summer was that?

Ans. In 1860.

Int. 23. The summer before that he used what?

Ans. He used the pans in '59 and '60.

Int. 24. You say he used the pans in '60, putting the fish in the pans; you say he also used the pans in '59. How did he use them in that year?

Ans. He put the fish on the racks and filled the pans with the freezing-mixture.

Int. 25. You say he used the pans to put the fish in, in the season of 1860, and he used the pans to put the freezing-mixture in, putting the fish on the racks, in the season of 1859. What did he use in the season of '58, if anything?

(Objected to as to form.)

486 Ans. He used this hogshead in '58, (pointing to Model No. 2.)

Int. 26. When you said then, in answer to your 10th direct interrogatory, that he used the hogshead arrangement in 1859, were you right?

(Objected to as to form and substance.)

Ans. No, I was not.

Int. 27. Do you remember the model now shown you, marked Piper Model, No. 4, N. A. P., Ex'r.?

Ans. I do.

Int. 28. Who made it, or got it up?

Ans. Mr. Enoch Piper got it up.

Int. 29. Was it before or after he went abroad?

Ans. I think it was before he went abroad.

Int. 30. Where was it kept, if you know, after he got it up?

Ans. In my husband's shop.

Int. 31. Has it been kept there from the time it was made until now? If not, where has it been in the mean time?

(Objected to for form.)

Ans. It was left there until we moved to S't John, in April, 1868.

Int. 32. Did Mr. Piper move from Camden to S't John? If so, when?

Ans. Mr. Enoch Piper did; I think it was in 1864.

And in answer to cross-interrogatories by Edward Avery, esq., counsel for respondents, she saith as follows:

Cross-int. 1. What is the name and occupation of your husband?

Ans. His name is Silas Piper; he is a sea-captain—a mariner.

Cross-int. 2. Is that his present occupation?

Ans. No, it is not.

Cross-int. 3. What is it?

Ans. Clerk for his brother Enoch.

Cross-int. 4. How long has that been?

Ans. Four seasons. This is the fourth year.

487 Cross-int. 5. He went into his brother Enoch's employment when he went to S't John, or before?

Ans. He went to Bathurst first.

Cross-int. 6. When was that?

Ans. Three years last spring.

Cross-int. 7. Mr. Enoch Piper went to S't John then before you did?

Ans. Yes.

Cross-int. 8. How many years before?

Ans. Two before my husband went there.

Cross-int. 9. What did your husband do last before he became clerk to his brother Enoch?

Ans. He worked at various employments in Camden, and froze fish two summers.

Cross-int. 10. For whom did he freeze fish those two summers?

Ans. For Middleton, Carman & Co.

Cross-int. 11. How did he freeze them?

Ans. I have described it before.

Cross-int. 12. What do you mean by your last answer?

Ans. I described the method in which the fish was frozen in those apparatus; and he froze them in the same ones after his brother left.

Cross-int. 13. In what year did he commence?

Ans. In 1864.

Cross-int. 14. Do you mean to say that that year he used all three of the apparatus you have described?

Ans. No; he didn't.

Cross-int. 15. Won't you tell me how he froze his fish; describe the method?

Ans. He used the pans to freeze the fish in, and put it into the cistern with four tubes.

Cross-int. 16. You have described two ways in which the pans were used; which of the two did he use?

Ans. He put the fish in the pans, and the freezing-mixture around them.

488 Cross-int. 17. How did he freeze them in '65? Any differently?

Ans. The same.

Cross-int. 18. Do you know who employed him to freeze these fish?

Ans. He took them in and froze them, I suppose, by his brother's orders.

Cross-int. 19. Do you know?

Ans. It was by his order.

Cross-int. 20. How do you know?

Ans. How do we know anything?

Cross-int. 21. Is that the only answer you can give to that question?

Ans. We had written communications from him from Bathurst and S't John.

Cross-int. 22. What did you mean by saying before that they were frozen for Middleton, Carman & Co.?

Ans. Because his brother ordered him to send them to that firm.

Cross-int. 23. How long then, in all, has your husband been employed by Enoch Piper?

Ans. Since he commenced the business.

Cross-int. 24. When was that?

Ans. In '58.

Cross-int. 25. How many seasons did he use the apparatus when the freezing-mixture was put into the pans?

Ans. He didn't use it at all. He put the fish in the pans.

Cross int. 26. In the year 1864 did you ever see your husband so use the apparatus?

Ans. No, not in '64, I don't recollect seeing him; previous to that.

Cross-int. 27. When previous?

Ans. In '60, I think. I won't be certain.

Cross-int. 28. Did you see them use it so in 1860?

Ans. Yes; in 1860 they used the pans.

Cross-int. 29. How many times did you see them use it so, and whom did you see so use it?

489 Ans. They used it through the season. I couldn't tell how many times—a good many times—I saw them. I saw my husband use it so.

Cross-int. 30. State, as nearly as you can, how many times you saw it so used, in 1860, by your husband.

Ans. They generally put the fish in twice a week, and used that apparatus every time they put the fish in, and they were some three or four weeks in freezing that quantity of fish.

Cross-int. 31. Please answer the question which was put to you. How many times did you see your husband do it?

Ans. I do not exactly recollect.

Cross-int. 32. Do you now remember that you ever saw him once?

Ans. Certainly I do.

Cross-int. 33. When was it that you saw him do it? What part of the year, and where?

Ans. In June, at Camden.

Cross-int. 34. You are sure that it was in June?

Ans. Yes.

Cross-int. 35. What makes you sure?

Ans. Because they took the fish in to freeze in June.

Cross int. 36. Didn't they take fish in to freeze in July too?

Ans. Through the season—from June into July—that was the season; they froze in both months.

Cross-int. 37. How do you know, then, that it wasn't in July instead of in June that you saw it?

Ans. Because the last of June I put some strawberries in the refrigerator to freeze (in Piper No. 3 B, I mean,) and froze them.

Cross-int. 38. This you know to have been in the year 1860?

Ans. Yes.

Cross-int. 39. How do you know that?

Ans. The Lincoln campaign; I should think everybody would remember it.

Cross-int. 40. You put the strawberries in, then, after the campaign commenced, did you?

Ans. I put them in June. You know as well as I do when the campaign commenced.

490 Cross-int. 41. Did you see them put fish in at the same time you put in strawberries?

Ans. Yes.

Cross-int. 42. Who put the fish in?

Ans. My husband and Enoch.

Cross-int. 43. They had ice put in the bottem of the box under the rack, had they not?

Ans. I didn't notice.

Cross-int. 44. Did you ever see ice under the rack on the bottom of that box?

Ans. I never noticed.

Cross-int. 45. Did you notice whether or not there was ice on the bottom of the box when you put in those strawberries?

Ans. I did not, or, if I did, I have forgotten.

Adjourned to 14th, at 11 o'clock, a. m. Further adjourned to 18th.

Cross-int. 46. Did you ever see your husband use an apparatus like Exhibit 3 B, in which a rack just like that shown in that exhibit was used?

Ans. I have.

Cross-int. 47. When?

Ans. In '59.

Cross-int. 48. How was that rack made?

Ans. I did not notice.

Cross-int. 49. Was there anything more than strips of board laid across the bottom of the box in the apparatus your husband used?

Ans. I did not notice.

Cross-int. 50. Did you ever see any apparatus in Camden constructed exactly like Exhibit No. 3 A?

Ans. I have.

Cross-int. 51. When did you first see it?

Ans. In 1859.

Cross-int. 52. In what part of the year?

Ans. In the summer.

Cross-int. 53. Was there no difference between it and the exhibit?

491 Ans. None that I have any knowledge of.

Cross-int. 54. Do you recollect if the two were exactly alike?

Ans. As far as I can recollect they were. I never went down into the cisterns.

Cross-int. 55. Were you ever in the preserving-chamber of the apparatus that was in use in Camden?

Ans. No.

Cross-int. 56. Did you ever see the inside of it?

Ans. I have.

Cross int. 57. How?

Ans. With a candle-light.

Cross-int. 58. Where were you situated?

Ans. Standing on the outside.

Cross-int. 59. Where was the door to that chamber?

Ans. I don't know that they had a door to the chamber.

Cross-int. 60. How did they get into it?

Ans. By an entrance at the top. I don't call that a door.

Cross-int. 61. Where were you standing when you looked into the inside of the apparatus?

Ans. I just answered that question.

Cross-int. 62. Please answer it again.

Ans. On the outside, standing on a plank.

Cross-int. 63. On top of the apparatus?

Ans. At the side.

Cross-int. 64. Who was in the preserving-chamber, or went into it at the time?

Ans. My husband.

Cross-int. 65. When your husband used the apparatus somewhat like Exhibit 3 B, how often did he have to turn the fish over in order to freeze them?

(Objected to, as the witness has not testified that he had to turn the fish over at all.)

Ans. I don't know anything about it.

Cross-int. 66. Do you mean to say that they were not turned over at all?

Ans. As I answered before, I do not know.

492 Cross-int. 67. Did you ever see any frozen fish taken out of that apparatus?

Ans. I don't recollect.

Cross-int. 68. Did you ever see any unfrozen fish put into it?

Ans. I don't recollect.

Cross-int. 69. Did you ever see any frozen fish taken out of the covered pans you have spoken of as used by your husband?

Ans. I have.

Cross-int. 70. When?

Ans. In 1860.

Cross-int. 71. What were they?

Ans. Salmon.

Cross-int. 72. Did you ever see him put unfrozen salmon into those pans?

Ans. The pans with the covers? I have.

Cross-int. 73. Up to what time did he continue to use those pans with covers for freezing fish?

Ans. Till he left for the provinces in '65. He used them the season of '65. He left the spring of '66.

Cross-int. 74. Did he ever use them after he went to the provinces?

Ans. He did not.

Cross-int. 75. Did he use the apparatus which you say was like Model No. 3 B, after he went to the provinces?

Ans. He did not.

Cross-int. 76. Did you ever see any frozen salmon put into the apparatus which you say resembled No. 3 A?

Ans. Yes, I've seen them put into that, into the preserving-chamber.

Cross-int. 77. Was an apparatus like that used after you went to the provinces?

Ans. No.

Cross-int. 78. Didn't they put ice into the preserving-chamber when they put the frozen fish in?

Ans. They put salt and ice in the tubes.

493 Cross-int. 79. Did you see them do that?

Ans. Yes.

Cross-int. 80. How often?

Ans. Twice in twenty-four hours.

Cross-int. 81. Do you mean to say that you saw them put the ice and salt into those tubs twice in twenty-four hours?

Ans. Yes.

Cross-int. 82. How many different days?

Ans. I don't recollect the number of times.

Cross-int. 83. Are you sure you saw them one day?

Ans. Yes.

Cross-int. 84. Didn't they put ice into the preserving-chamber also?

Ans. Not to my knowledge.

Cross-int. 85. Didn't they pack the frozen fish with ice in the preserving-chamber?

Ans. Not to my knowledge.

Cross-int. 86. Do you mean to say that you never saw any ice put into the preserving-chamber?

Ans. Not to my knowledge.

Cross-int. 87. Where is your husband now?

Ans. At S't John, N. B.

Cross-int. 88. Isn't he in partnership with Enoch Piper in the fish business?

Ans. He is his clerk.

Cross-int. 89. Isn't he his partner?

(Objected to.)

Ans. He is his clerk.

Cross-int. 90. Cross-int. 89 repeated.

(Objected to.)

Ans. He is not at present.

Cross-int. 91. Has he ever been?

(Objected to as being a matter of law.)

Ans. I do not know about their business.

Cross-int. 92. Do you mean to say that you have never been informed whether he was, or not, a partner of Enoch Piper?

494 Ans. I never was. Since he has been in the Provinces he has been clerk.

Cross-int. 93. Was he a partner before he went to the Provinces?

Ans. I never inquired.

ELIZA PIPER.

Adjourned to Monday, 20th September, at 10 a. m.

Deposition of William H. Newhall, taken, subscribed, and sworn to, before N. A. Parks, examiner.

SEPTEMBER 20, 1869.

WILLIAM H. NEWHALL, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Causten Browne, esq., of counsel for complainant, as follows, viz:

Int. 1. State your name, age, residence, and occupation.

Ans. William H. Newhall; age, thirty-three years; residence, Lynn, Mass.; occupation, clerk.

Int. 2. Were you ever employed as book-keeper by Mr. John Marston, or his firm, and if so, in what years?

Ans. I was. I think in 1860, and '61, part of each year.

Int. 3. Have you here present the ledger which you kept for that firm at that time?

(Objected to.)

Ans. I have.

Int. 4. Will you turn to page 174 of that ledger, and state in whose handwriting the debits there entered to Charles K. Higgins are?

(Objected to.)

Ans. In my own.

Int. 5. Will you read them?
(Objected to.)
495 Ans.

1860.

June 12.	158½ lbs. fresh salmon, at 18	$28 53
" "	box and teaming	50
" 18.	1 pair scales	7 00

Void. 1 box. lbs. sm. salmon, 12.

Int. 6. At what date were those entries made by you?
(Objected to.)
Ans. I couldn't say.
Int. 7. From what were they taken?
(Objected to.)
Ans. I think from a blotter kept at the time.
Int. 8. By whom?
(Objected to.)
Ans. By myself.
Int. 9. At what dates were the entries made in the blotter which appear here in the ledger?
(Objected to.)
Ans. That I couldn't answer. [Mr. Marston at that time was in the habit of going to New York for the disposition of his fish, taking with him more or less in quantity of boxes, and while there would of course dispose of them to the best advantage, and on his return render an account of sales; so that I couldn't say at what time the entry was made, though the sale was without doubt made at the time of its entry in the ledger.]
(Part of answer in brackets objected to as irresponsive.)
Int. 10. What was your custom as to the dates under which you entered such debits? What dates did you take?
(Objected to.)
Ans. I think the date of the sale made by Mr. Marston.
(Counsel for respondents declines to cross-examine.)

WILLIAM H. NEWHALL.

496 *Deposition of W'm H. Middleton, taken, subscribed, and sworn to before N. Austin Parks, examiner.*

SEPT. 20, 1869.

W'M H. MIDDLETON, recalled by complainant, doth depose and say, in answer to interrogatories propounded to him by Caasten Browne, esq., of counsel for complainants, as follows, namely:
(Counsel for respondent objects to the examination of the witness, he having been twice or thrice examined before in this case.)
Int. 1. If you have any correction to make in any part of your testimony taken in New York you have now an opportunity of stating it.
Ans. I wish to correct my answer to question on cross-examination, No. 126. The question was about how much has been the average yearly income. I understood and answered the question as of average yearly sales, instead of income.
(Counsel for respondents declines to cross-examine.)

W. H. MIDDLETON.

Adjourned to 21st inst., at 2.30 p. m.

497 *Deposition of John Marston, taken, subscribed, and sworn to before N. Austin Parks, examiner.*

OCT. 4, 1869.

JOHN MARSTON, having been duly sworn, doth depose and say, in answer to interrogatories propounded to him by Causten Browne, esq., of counsel for complainant, as follows, namely :

Int. 1. State your name, age, residence, and occupation.

Ans. John Marston ; age, sixty-five years ; residence, Lynn, Mass.; occupation, trader in fish in Boston for the past twenty years and more.

Int. 2. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market, New York City ? If yea, how long have you known him ?

Ans. I have no dates to know how long I have known him ; but I should think since some two or three years before 1860 I traded with him.

Int. 3. Did you ever have occasion to go into the cellar which was used by Mr. Racey in Centre Market in connection with his stall ? If so, what were the circumstances which led to your doing so ?

Ans. I was in his cellar, or the cellar that he occupied at the time I was trading with him, a number of times ; I can't say how many. At that time he had but very little, if any, merchandise.

Int. 4. Is there any circumstance by which the time of your last visit to that cellar can be ascertained ?

Ans. I don't know that I have any ; there may be something in some of my books that would lead to that ; but I don't know as I could find the books.

Int. 5. I speak of the time prior to 1863 or 1864. Is there any business transaction by the aid of the date of which you could state when you were last in that cellar prior to 1863 or 1864 ?

498 Ans. I've no recollection of being in that cellar after 1860, the time Higgins—or I purchased the stand for Higgins.

Int. 6. State a little more particularly what that transaction about the purchase of the stand was.

(Objected to.)

Ans. I had been trading with Racey for some two or three years, and he was in my debt a certain sum ; I not knowing just the amount at present. He, at the time, had no means, or said he had none, to pay the demands that I had against him ; therefore, as he occupied one or two other stands, or had the lease of them, in the Centre Market, he sold me one of them to answer the demand.

(Objected to.)

Int. 7. Can you refer to any entry, in any book of your business, kept at that time, which is connected with that transaction ?

(Objected to.)

Ans. The ledger for 1860, page 174, has an entry made by my bookkeeper, Mr. Newhall, as follows :

"1860. Dr. CHAS. K. HIGGINS.

"June 18. 1 pr. scales..... $7 00."

These scales were attached to the stall Racey sold me the lease of, and I sold them to Higgins about the same time.

Int. 8. About the time this purchase was made, were you in that

cellar of Mr. Racey's more than once? If so, state generally how frequently.

(Objected to as to form and substance.)

Ans. About that time, and a number of times before. I couldn't say how many.

Int. 9. What occasion had you to visit the cellar, or to see and know what property Racey had there?

(Same objection.)

Ans. I sold him fish; some of the fish I sold him he kept in that cellar. I went, by his request, one time or more, to examine some of the fish I sold him, as he had some fish of his own to show me and
499 some that he bought of me. I think he thought that there was danger that some of the fish he bought of me would hurt. They were dry fish.

(Objected to.)

Int. 10. Will you state what you saw in that cellar during any of your visits to it in 1860, or previously, to the best of your recollection?

Ans. I've no recollection of anything except fish, and a small quantity of that.

Int. 11. Did you see any apparatus there for preserving fresh fish? If so, what?

(Objected to as to form and substance.)

Ans. I don't recollect seeing anything of the kind.

Int. 12. State what articles, if any, you do remember to have seen there.

Ans. I've no recollection of anything excepting casks to put salt fish in and barrels with fish in them, or to put them in.

Int. 13. Where is the book of original entry from which the ledger-entry above quoted was taken?

(Objected to.)

Ans. I've not had the charge of my books; but my book-keeper has. The name of the firm has been changed. The books were laid aside previous to the changing of the firm, or at that time. I suppose the old books are boxed up somewhere, but I have had no time to look for them.

Int. 14. Did you have anything to do with the first sale of frozen fish that Mr. Piper made—frozen according to his patented process? If so, what?

(Objected to.)

Ans. I had, with what he told me was the first—the first I ever saw of that description from him or any one. He came to me and wanted I should buy them of him, as I was trading in salmon, and was acquainted with Mr. Piper previous to that, having purchased fish of these kinds of him before. I told him I didn't care to buy, as they were frozen, and I not knowing the nature of them, or if they would keep in
500 good order, but told him I would write to W. M. Rogers, of Fulton Market, N. York, as I was trading with them, and had been selling them salmon—and as they were the principal, or the largest dealers in fresh salmon, so far as my knowledge extends, and that they would, I thought, either buy them or sell them for him.

(Answer objected to as stating hearsay.)

Int. 15. Have you any letter here written by yourself to Rogers & Co. at the time of, and relating to, the negotiation mentioned in your last answer?

(Objected to.)

Ans. I have. This is one. It is marked Exhibit Marston N. A. P., Ex'r.

(Admissibility of exhibit objected to.)

"MR. ROGERS &C.

"GENTS the man that has got those salmon is hear in a vesell he has 35 or 40 left we showed him the dispatch that you sent to day he sed he could not aford to sell them for that we could buy them less than one dolar we told him he had beter tellagraph some price and write and he has done so but i donte no what he wrote proble you will git the leter tomorrow he ses E. Baker told him he could git $100 for them.

"BOSTON J. MARSTON &C."

"Dec 30 58.

Int. 16. After this, were Mr. Piper's frozen fish sent to Rogers & Co., from year to year through any one; and, if so, through whom?

(Objected to.)

Ans. They were, for a certain time, through me or by me shipped to me by Mr. Piper, and by me to Rogers & Co.

(Objected to.)

And in answer to cross-interrogatories propounded by Edw. Avery, esq., (waiving no objections taken on direct examination and cross-interrogatories as to the subjects objected to, de bene esse,) deponent saith as follows, namely:

501 OCTOBER 18, 1869.

Cross-int. 1. Can you state from memory the year you bought out the stands in Centre Market of Mr. Racey?

(Objected to.)

Ans. No, sir.

Cross-int. 2. Can you state the season of the year from memory?

(Objected to.)

Ans. No, sir.

Cross-int. 3. Do you know whether it was in winter or spring that you visited a cellar with Mr. Racey, in New York, as stated by you in your previous answers?

Ans. No, sir.

Cross-int. 4. At the time you visited Centre Market, for the purpose of effecting the purchase of the stands of Mr. Racey, did any one go with you from Boston to New York?

(Objected to.)

Ans. I've no recollection of any one.

Cross-int. 5. Was Mr. Seavey, of the firm of Brown & Seavey, with you when you visited the cellar with Mr. Racey, as stated by you in your previous answers?

(Objected to.)

Ans. I've no recollection of his being in the cellar with me.

Cross-int. 6. Do you know what cellar it was you visited with Mr. Racey, as stated by you?

(Objected to.)

Ans. I know that he said it was his cellar that he occupied for storing part of his fish.

Cross-int. 7. Can you describe its location?

Ans. Not definitely. It was near the stalls above, as I remember, southerly below the door where his stall was. I don't recollect the number, but think it was one or two doors below his stall. I don't know don't remember; can't tell.

502 Cross-int. 8. Do you remember how the cellar that you went into was lighted?

(Objected to.)

Ans. No, sir. It was the day-time when I went in, and of course they would have no light except by windows and doors.

Cross-int. 9. Were there in fact any windows in the cellar?

(Objected to.)

Ans. I can't remember positively about it.

Cross-int. 10. About how large a cellar was it?

(Objected to.)

Ans. I haven't any means of knowing. It would be a mere guess, it was so long ago. As near as I can recollect, it was a pretty large cellar.

Cross-int. 11. Did you pay any attention to what there was in the cellar, except what you went to look at?

(Objected to.)

Ans. I can't say positive; my attention was drawn there to look about fish. If there had been anything new there, my attention would probably have been drawn to it. I should generally look at anything new or attractive.

Cross-int. 12. Would an article that appeared to be an ordinary or common closet, running from the floor to the ceiling on either side of the door as you entered, have been considered by you new or novel so as to attract your attention?

(Objected to.)

Ans. I've no recollection of seeing anything of any new structure, for any use or purpose, excepting a few casks or fish-barrels to put salt fish in.

Cross-int. 13. I don't think you have answered the last question; will you please do so?

(Objected to.)

Ans. I would say to you that if there was anything there in the shape of a freezer I would have noticed it.

Cross-int. 14. No matter what its external appearance was; whether old or new,—is that so?

(Objected to.)

503 Ans. I think I've answered the question once, and that should be sufficient. I saw nothing attractive there except casks and boxes. If there had been a freezer there I should have seen it. There was none there, not when I was there, or in the cellar that I was in.

Cross-int. 15. Do you think you could tell the difference between a large-sized ice-box and a freezer by simply seeing the outside of it?

(Objected to.)

Ans. It would depend something upon what kind of a freezer it was, and what kind of an ice-box it was. I know the difference between an ice-box and a freezer, and there was no freezer there.

Cross-int. 16. What is the difference between the exterior appearance of an ice-box built of pine boards outside, six feet square, with a door in the centre on one side, and a freezer built of the same material of the same size and door in similar position? Could you tell the one from the other without seeing the inside?

(Objected to.)

Ans. If they were similar in outside appearance, of course they would both look alike, and you couldn't tell the difference without seeing the inside.

Cross-int. 17. Did you observe the partitions in that cellar on either side the door?

(Objected to.)

Ans. I've no recollection of seeing any partitions either side of the door.

Cross-int. 18. Did you observe a machine for grinding ice there?

(Objected to.)

Ans. I've no recollection of seeing any.

Cross-int. 19. Did you observe a large-sized ice-chest on the right of the door as you went in?

(Objected to.)

Ans. I've no recollection of seeing any.

Cross-int. 20. Do you mean to say that your recollection of that visit to the cellar is sufficiently distinct to enable you to swear positively that there was not there at that time an ice-grinding machine, and a large-sized ice-box on the right-hand side of the door?

(Objected to.)

504 Ans. In the first place I must ask you one thing. The question is on that visit what I saw. I was there at various times, on several occasions, and I don't know of any one visit that I can answer about. The question is of that special visit. I've no special visit to speak of. I made several visits.

Cross-int. 21. During what years did you make those visits?

Ans. I've no recollection only by the dates on my books—1860, and some two or three years before that.

Cross-int. 22. Were you there after you purchased the stand, or stands, of Racey, or were all your visits before that?

Ans. I was there before and after.

Cross-int. 23. But you are unable to state what you saw at any one of those visits—your memory not enabling you to distinguish between them—is that so?

(Objected to.)

Ans. If I don't remember of seeing anything of that description, there's nothing to distinguish.

Cross-int. 24. Are you able to say, as matter of memory, that you were there—in the cellar—in 1860?

(Objected to.)

Ans. I was there when I bought the stand; and if I bought it in 1860, as my book says I bought the scales, I was there in 1860. I sold the scales to Higgins that I bought of Racey. The stand didn't belong to Racey, only the right to it; the scales were different; they did belong to him.

Cross-int. 25. How long after you bought the stand did you sell the scales?

(Objected to.)

Ans. I don't remember.

Cross-int. 26. Was it a month?

(Objected to.)

Ans. Couldn't say.

Cross-int. 27. Two months?

(Objected to.)

Ans. Couldn't say.

Cross-int. 28. Three months?

(Objected to.)

505 Ans. I've no date with me, and don't remember how many months.

Cross-int. 29. Are you sure that it was not in the year '59 that you purchased the stands in Centre Market, or the right to them?

Ans. I am not sure; I've nothing to go by but the dates of my book; they will show.

Cross-int. 30. Do you recollect being in that cellar at any time after January 1st, 1860, as a matter of positive memory?

(Objected to.)

Ans. I'm not positive.

Cross-int. 31. At the time you took those stands of Mr. Racey, do you remember a large ice-box which had been used in connection with those stands?

(Objected to.)

Ans. I'm not positive, but I think there was a large one in the stall at the time I took it of him.

Cross-int. 32. Did you purchase that ice-box of Racey, or was it removed from the stand when you took possession?

(Objected to.)

Ans. I am not positive. If there was one when I purchased it, I think it was in the bargain that it should remain there. It is my impression that there was such an ice-box there, and that it was to remain; but my memory doesn't allow me to say positive.

Cross-int. 33. Is it not true that there was a large ice-box there which was removed from the stand by Mr. Racey, and put into one of the cellars under the market?

(Objected to, as to form and substance.)

Ans. That I can't say.

Cross-int. 34. Haven't you stated to parties that there was there a large ice-box which Racey removed, and which you afterwards saw in one of the cellars?

(Objected to as before.)

Ans. No, sir. I've no recollection, to any party.

Cross-int. 35. How long after you purchased that stand was it that you were last in that cellar with Mr. Racey?

(Objected to.)

596 Ans. I have stated, I think, a number of times—if not, I state now—that I've no recollection of that. I can't say any specified time, only about the time that I negotiated with Racey about the stand, and had that transaction with Higgins.

Cross-int. 36. Assuming the transaction with Higgins to have been in June, '60, how soon after that was it that you were in the cellar with Racey?

Ans. I've no means of knowing how soon. I don't remember.

Cross-int. 37. Do you know you were there at any time after that transaction with Higgins prior to '63 with Mr. Racey?

Ans. I have no means of knowing. I don't remember. I can't tell.

Cross-int. 38. Do you know you were there at the time you made the transaction with Higgins—that is, in the cellar?

(Objected to.)

Ans. I am not positive. I might and I might not. In all probability I was; but I am not positive.

Cross-int. 39. Do you know you were there between July 1st, '59, and January 1st, '60, as a matter of positive memory?

(Objected to.)

Ans. No, sir. I was, in all probability, but I can't say from memory. I wouldn't trust my memory about it; all I go by is that date.

JOHN MARSTON.

Adjourned to 19th, at 9.30 a. m.

507 *Deposition of George E. Sherwood, taken, subscribed, and sworn to before N. Austin Parks, examiner.*

OCT. 22, 1869.

GEORGE E. SHERWOOD, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Causten Browne, esq., of counsel for complainant, as follows, namely:

Int. 1. What is your name, age, residence, and occupation?

Ans. George E. Sherwood; age, thirty-three years; Manchester, N. H.; I am a tinsmith.

Int. 2. Will you look at the model marked Piper Model, No. 4, and say whether you recognize it, and whether you had anything to do with its construction, and what?

Ans. I recognize the model. I made it after the design furnished by Mr. Piper.

Int. 3. When did you make it?

Ans. In September, 1860.

And in answer to cross-interrogatories propounded to him by Edw. Avery, esq., deponent saith as follows, namely:

Cross-int. 1. How do you fix the date when you made it, and where did you make it?

Ans. I fix the date from the fact that I was making it at the time I procured torches, badges, etc., for the Lincoln election. My diary shows the date to be in September, 1860. I made it at Rockport, Maine. In my former affidavit, I think I stated it to be Camden, of which Rockport was a part.

Cross-int. 2. When did you leave Camden or Rockport?

Ans. In July, 1862.

Cross-int. 3. Where have you been since?

Ans. In the Army for three years. At Manchester and New York, up to the present time.

GEO. E. SHERWOOD.

Examination adjourned to 2.30 p. m.

508 *Deposition of Henry B. Renwick, taken, subscribed, and sworn to before N. Austin Parks, examiner.*

OCT. 22, 1869.

HENRY B. RENWICK, recalled, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Causten Browne, esq., of counsel for complainant, as follows, namely:

Int. 1. Have you examined the specification of the patent granted to Henry Benjamin and Henry Grafton, of England, in the year 1842, inrolled July 27, 1842, and numbered 9240, and do you understand the process for preserving fish and other substances as therein described?

Ans. I have examined the patent, and understand the process.

Int. 2. Will you state whether, in your opinion, the method or process there described is substantially like, or substantially unlike, that described in complainant's patent of March 19, 1861, and give the reasons for your opinion?

Ans. It is substantially different from that described in complainant's patent of March 19, '61. The Benjamin & Grafton patent describes two plans for preserving fish and other articles, one of which is applicable when these articles are to be preserved for a long time, and the other

when they are to be kept preserved for a short time. In the first process the fish are to be frozen. In carrying out the second process they are to be kept in an atmosphere not specially described as one which would freeze the fish, or is below the temperature of 32°. In order to preserve the fish for a long time, they are immersed in "surroundings" of water, the water being contained in a metallic or other vessel, and this vessel being deposited in a freezing-mixture contained in a wooden trough. When the fish is to
509 be preserved for a long time the freezing-mixture is to be renewed from time to time, and the fish and the mass of ice which contains the fish is thus kept in a frozen state. Now, in carrying out this process, the fish is not frozen by immersion in "surroundings" of cold air, which is one of the essentials of Piper's process. On the contrary, it is frozen while in a tank of water, and only after the surrounding water has been frozen. This process of Benjamin & Grafton, if practicable at all, would be so only under difficulties. In the first place, the fish cannot be frozen until all the water is frozen. In the second place, there would be a great waste of ice and salt in freezing the surrounding water. In the third place, the ice near the fish and the fish itself would have to be frozen by cold applying itself through the ice already formed, which is a good non-conductor, and would thus increase the waste of freezing-mixture. Fourthly, there would be a great waste of room in the apparatus, as it could not contain nearly as many fish as it would if no water were used. And lastly, it would be almost impossible to determine when the fish was frozen. And even if the fish were frozen, it would be necessary to transport it from place to place inside of its block of ice, thereby materially increasing the cost of transportation. I am unable to find in the Benjamin & Grafton patent any description of freezing fish by immersion in an atmosphere of common air reduced below the freezing-point by means of freezing-mixtures contained in vessels whose interiors are practically out of communication with that atmosphere; neither am I able to find any description stating that fish thus frozen are to be kept frozen, and therefore preserved in a similar atmosphere. And this atmosphere thus cooled and kept from contact with a freezing mixture is the essential element in working out Piper's process. Benjamin & Grafton further describe a plan for cooling (not freezing) and preserving for a short time; but, in carrying out this latter plan, there is no description that the temperature of the chambers inclosing atmosphere in which the articles are to be immersed is to be kept below the freezing-point, nor any description that the freezing-mixture contained in the vessels within this room is to be kept out of contact with the atmosphere of the room. The fact that the temperature both for freezing and for preserving should be below the freezing point, and that the atmosphere sur-
510 rounding the fish should be out of contact with the freezing-mixture. are both essentials in Piper's process and described in his patent, and neither of them are described or even hinted at in the patent granted to Benjamin & Grafton.

(Counsel for respondents declines to cross-examine.)

HENRY B. RENWICK.

Deposition of Enoch Piper, taken, subscribed, and sworn to before N. A. Parks, examiner.

OCT. 22, 1869.

ENOCH PIPER, recalled, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by CAUSTEN BROWNE, esq., of counsel for complainant, as follows, namely:

Int. 1. Have you read, or heard read, the testimony given by Charles F. Pike, in regard to an alleged interview between you October 12, 1866, at the Hancock House; if so, will you state how far Mr. Pike's account of what passed at that interview is correct or incorrect?

Ans. [The interview was suggested by the parties here in Boston (I mean Brown & Seavey.) They sent a card to my hotel, stating that they would like to see me, immediately after the interview I had with them, when I informed them that I should commence a suit against them on infringement. I went back in answer to the card. Mr. Brown inquired of me if I would not like to see Mr. Pike, the patentee of the apparatus which they were using. I said to him that my business was with them, and not with Mr. Pike. Mr. Brown stated that Mr. Pike would like to see me, and if I could wait until, I think it was, nine o'clock the next morning, he would telegraph Mr.
511 Pike to meet me at their place. I consented to do so, and met Mr. Pike as he suggested. Mr. Pike invited me to his hotel, saying that his papers were all there.] We went to the hotel together—the Hancock House—and as we entered his room he had his table pretty well spread with documents; among the rest was a book containing a trial that he had been engaged in, involving, as he said, the Schooley patent. He handed the book to me, and stated that he would like to have me examine it; that the lawsuit lasted seven years, and cost him seventy thousand dollars, and said that there was no use in paying out money to lawyers, and wanted to make me a proposition to arrange this matter to avoid litigation. Said he: I'll make a proposition to surrender both of our patents, and take out a joint patent. I will get up a joint-stock company of one hundred thousand dollars. I'll give you one quarter, and he would take another quarter, and guarantee to sell the other half. I told him I didn't care to get mixed up in a joint stock company, but if he wished to avoid litigation I would sell the whole thing out, and then they could do as they pleased. I think I showed him Newton's letter. Couldn't say whether I read it to him or not. I informed him that I ascertained by information in London that the experiments proved a total failure, and that I was informed by Benjamin's brother and the man who built the chamber that Benjamin lost a thousand pounds in the experiment. I made no statement to him, Pike, or any one else that there was a fan in the chamber, and all the information with regard to the fan was obtained from the specification. When I speak of the experiments, I refer to the experiments of Benjamin & Grafton. [I never knew, and of course I never told him or any one else that Newton was the agent for taking out the Benjamin & Grafton patent.]

(Passages in brackets objected to.)

Int. 2. You speak of a letter of Newton's which you think you showed Mr. Pike. Where is that letter?

Ans. It is now shown me, and is marked Pike Exhibit No. 2, N. A. P., ex'r.

Int. 3. Except that letter and the one marked Pike Exhibit
512 No. 3, did you receive any letter from Mr. Newton upon the subject of your invention before obtaining your patents?

(Objected to as to form and substance.)

Ans. I did not.

Int. 4. Returning to the subject of Mr. Pike's account of the conversation at the Hancock House, I wish to ask you in regard to the following matters testified to by Mr. Pike, namely: He says, after looking over your two patents, you stated that his apparatus was no infringe-

ment of yours, only in the use of ice and salt in a close chamber. Is that correct?

Ans. That is not correct. If I said anything on the subject of infringement, it was in accordance with the claim of my first patent, as I told him that I depended upon that particularly in infringement. [I think I informed Mr. Pike of the interview which I had with Henry Grafton, one of the parties to the English patent, to the effect that Grafton stated that their method depended entirely upon a suitably-constructed apparatus to carry it out, and that they had always kept their apparatus secret.]

(That part of the answer enclosed in brackets objected to as not responsive.)

Int. 5. Do you remember a refrigerating-apparatus belonging to a Mr. Whitson in New York City, at or about the time when you put up William M. Rogers & Co.'s apparatus, in 1862?

(Objected to on the ground that this witness has been examined since Whitson's testimony was taken, and the subject is therefore not open at this stage of the examination, and objected to generally.)

Ans. I do.

Int. 6. Did you ever examine it?

(Objection continued.)

Ans. I did.

Int. 7. Do you know how long that apparatus had been built at the time when you began to work on William M. Rogers & Co.'s freezer?

(Objection continued.)

Ans. I hardly think it was completed before I commenced the construction of the apparatus for W. M. Rogers & Co.; but I recol-
513 lect it was charged up the first time while we were at work upon our apparatus.

Int. 8. Had you previously to that put up a temporary apparatus for Wm. M. Rogers & Co.? If so, what kind of apparatus was it?

(Same objection, and also as not being in answer to anything put in by the respondents; also as to form.)

Ans. The year before, I put some metallic pans and pipes into a large ice-box, as a temporary arrangement, to put in my frozen salmon during the cold weather. It was merely sufficient to keep the fish from thawing, in soft weather, during the time I was shipping them. They used in that box a freezing-mixture, in the pans, of salt and ice.

Int. 9. Mr. Benjamin Rice, a witness for the respondents, speaks of the freezing-apparatus which you put up for Wm. M. Rogers & Co. as proving a failure, and as having been altered afterwards, in consequence of suggestions made by Mr. Whitson. Will you state whether there is any truth in that, and what?

Ans. I have seen, or heard read, Mr. Rice's testimony, and there was no alteration ever made, to my knowledge, in order to obviate any such difficulty as he stated. The apparatus, which was in two compartments, one of which contained eight tubes, and was nearest the door, was the one which had the taper tubes, and both apparatuses still remain the same, with regard to the freezing-vessels, as when first constructed; and what alterations were made, only related to the addition of a small drain-pipe, with the exception of a metallic lining, similar to what they have in ordinary ice-chests.

Int. 10. Was there any difficulty about the working of that freezing-apparatus; if so, what?

Ans. There was none to my knowledge. If there had been, I should probably have been informed.

Int. 11. Certain statements have been made in the deposition of John H. Racey, in regard to your paying him money at or about the time of his testifying as a witness in your behalf, in this case. State what money you paid Mr. Racey, the amount you paid him, and the circumstances under which you paid it.

(Objected to, but not on the ground of its being out of time.)

514 Ans. I didn't agree to pay him any money, nor authorize any one else to, at any time. I paid him five dollars, after he got through with his first day's testimony, for his attendance that day and the day following. [When he got through, he stated that he could procure, or find, the plumber who built his brother's apparatus together with some other witnesses, which might be important to the case.] I took out five dollars, and handed it to him. He wanted to know if that was all I was going to pay him, saying that he had lost his place down to Long Branch, by stopping to testify, etc.; and stated that Mr. Cutter had told him that he would pay him liberally for hunting up the testimony. I consulted with Mr. Cutter as to whether it was best to give him any more in advance for his services; and as John Racey declined doing anything without more pay in advance, Mr. Cutter told me I had better pay him fifteen dollars. Accordingly I gave him fifteen dollars. After that he came to me in Fulton Market, and stated that he had got on the track of the ice-man. He hung round me some time. I didn't offer him any more money, but he said he couldn't hunt up this man without being paid; so I gave him five dollars more, and he agreed to report at a certain hour that evening, at French's Hotel. I waited there for him, but did not see him at the time. Sometime during the evening he left a card at the United States Hotel, where I was boarding, saying he had not found the man, but was in hopes to, during t e night. [After that I received a letter from Judge Phillips, which I considered a dunning letter. I went down from the court-room to Phillips' office, talked the matter over with him, told him what I had paid Racey, which I thought was sufficient for what time he had spent, and the damage he had sustained in remaining to hunt up witnesses. He said he thought so too; but said it would be well enough to satisfy him without offending him.] I saw John Racey, told him I thought I had paid him fair compensation; but he thought not, and insisted upon twenty-five dollars more. And I really paid him twenty-five dollars, to get rid of him, with the understanding, however, that I could get along without any more services from him.

515 Int. 12. Did you, at any time, promise Racey a situation in Boston, or a chance to go to sea? If so, what were the circumstances of your making him those offers?

(Same objection as to last question.)

Ans. I made him no offers of any chance to go to sea, from the simple fact that it was out of my line of business to make him an offer of that kind. He spoke to me, however, inquiring if I could not get him a chance in Boston. I replied to him that I thought the prospect was no better in Boston than in New York; but he said he'd got sick of New York, and would like to find employment in Boston or some other place.

Int. 13. Did you offer him a large reward in case he would find the plumber who did the plumbing on his brother's first freezer? If so, what reward did you offer him, and why?

Ans. I did not, but I think I told him that I had thought some time before of offering a reward of two or three hundred dollars for the plumber [but I had come to the conclusion that it would be useless to

do so, for I thought his brother Joe fixed the thing with the plumber at the time he commenced his infringement.]

(Part of answer in brackets objected to.)

And in answer to cross-interrogatories, propounded to him by Edward Avery, esq., of counsel for respondents, deponent saith:

Cross-int. 1. Will you describe minutely, and in detail, the internal construction of each compartment of the apparatus constructed by you for William M. Rogers & Co.?

Ans. One of the compartments is constructed in exact accordance with my second patent, except that it had, and has, eight conical tubes instead of six, and perhaps a metallic lining—I'm not sure about the lining. That relates to the compartment nearest the door, as you enter, rather on the left-hand side against the wall. The other compartment contains six vertical, parallel tubes, and the two horizontal tubes that they connect with are situated just under the floor of the preserving-chamber. If my memory serves me right, the drain-pipe proper done its office in keeping the horizontal tube full of pickle, and the
516 alteration was simply an outlet pipe at the lower part of the horizontal tube, for the purpose of clearing out sediment, and was intended to be kept stopped when not so used.

Cross-int. 2. When first did you ever freeze anything in either one of those compartments?

Ans. I never froze anything myself in New York that I recollect of. When that apparatus was first charged, I think, was after I left for home.

ENOCH PIPER.

Deposition of Isaac J. Cutter, taken, subscribed, and sworn to, before N. Austin Parks, examiner.

OCT. 22, 1869.

ISAAC J. CUTTER, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Causten Browne, esq., of counsel for complainant, as follows, namely:

Int. 1. Are you associate counsel in this case?

Ans. I am.

Int. 2. Certain statements have been made by John H. Racey, in regard to payments, or offers of money made to him, by you, on behalf of Mr. Piper, at or about the time of his (Racey's) testifying as a witness for Mr. Piper in this case; will you say how far such statements are true or untrue, referring to Racey's deposition, by question and answer, as you may find convenient?

(Objected to.)

Ans. Referring to John H. Racey's second examination, and his answer to the first question, he states, "I got money from both." His statement is false, as far as it relates to me. I never paid him any money. His answer to question 2 contains a false statement. I did not pay him five dollars as court fees, neither did he sign any
517 receipt for it, as stated. In answer to question 16 there is a false statement. I did not tell him it would not do to pay him any more money until the testimony was taken, and he did not sign a receipt for five dollars, as stated. In the answer to question 45 there is a misstatement. I asked him to be present in the court-room to be examined, at eleven o'clock. In answer to question 47 there are several false

statements. I did not give him instruction how to act, and to remember days and dates, but simply made to him inquiries in the ordinary and usual way, as to what he remembered in regard to the matters inquired of. I did not tell him that he would be well paid, but I did say what his fees as a witness would be, and also told him that he would be paid for any services he might render in finding witnesses; he having stated to me that he had no doubt he could find for us a plumber who did the plumbing in his brother Joseph's first freezer; and probably other witnesses who would be of service to us. I did not tell him we did not dare to give him anything then, for fear he would be inquired of, and I did not propose to get him a situation in case he lost his present one. In answer to question 48 there are false statements. I did not tell him that the examination would only take a few minutes, and the question itself embraces the facts as I understood them, and as I remember them now. In answers to questions 59 and 60 there are false statements. I did not prompt him to state any facts that were not true, but did ask him to state the facts as precisely as he could remember them. In answer to question 64 there are false statements. I did not tell him to say, that to the best of his knowledge he saw no freezer there; neither did I make him say that he worked year after year for his brother Joseph, unless the simple asking of the question made him say so. In answer to question 70 there is a false statement. The five dollars spoken of was paid to John H. Racey by Mr. Piper in my presence, after the examination had closed for the day. I heard the conversation between him and Mr. Piper when it was paid, and did not hear Mr. Piper tell Racey to say nothing of it until the examination was over. If he had said so I have no doubt I should have heard it. In answer to question 73 another false statement occurs. The money re-
518 ferred to was paid to him at the table in the court-room in my presence. In answer to question 74 false statements are found. The fifteen dollars referred to was not paid John H. Racey by Mr. Piper for the evidence he had given, but was paid, and expressly stated so at the time by me, for services to be rendered by Racey in hunting up witnesses for Mr. Piper, and the money was paid only after urgent solicitation of Racey for some money, he saying that he had a wife and two children, and they must have some bread to eat, and he had lost his place probably or would lose it by staying away to find witnesses for us. He wanted twenty-five dollars at that time, but we concluded to give him but fifteen. The answer to question 75 is full of misstatements. As I have said before, the five dollars was paid at the close of the first day's examination for witness-fees alone. I did not tell him I would give him more for the reason he states or for any reason; and the fifteen dollars was given him the following day. Answers to questions 79, 80, and 81 contain many false statements. He did hold a conversation with his brother William, first speaking with him near the door of the court-room, and while conversing with him passing down-stairs to the street, and William did speak to him about being a deserter from the Army. In answer to question 84 false statements occur. The real facts in the case are those suggested in the question, and not those stated in the answer. In answers to questions 89, 90, and 91 false statements occur; the paper signed by Mr. Racey, besides his deposition, was not a receipt for money, but a certificate of his attendance for two days as a witness. In answer to question 96 I did not say to him that he should be handsomely rewarded, and the fifteen dollars referred to was paid him directly by Mr. Piper, and not by me. The answer to question 99 is not true, as stated. The answer to question 106

is not true. The real facts are as suggested in the question, for I heard him make the statements inquired of to Mr. Piper. In the answer to question 119 there are errors. Among others I did not promise him from twenty-five to thirty dollars, and I did not tell him that if his evidence was worth more I would pay him more. The answer to question 120 is mostly false. The real facts are suggested in the question. The answer to question 146 is not true. The answer
519 to question 148 is false. There are other errors in these answers, but I do not deem them of sufficient consequence to be referred to.

(Answer objected to on one ground, among others, that it tends to contradict statements made by complainant's own witness, and also answers on matters purely collateral, called out by interrogatories propounded by complainant, also as introducing statements made by John H. Racey at times respecting which no inquiries were made by the respondent.)

(Cross-examination declined.)

ISAAC J. CUTTER.

N. A. P., EX'R.

The United States Patent-Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this Office.

In testimony whereof I, S. H. Hodges, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed, the fifth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-third.

[L. S.] S. H. HODGES, *Acting Com.*

To the Commissioner of Patents:

The petition of Enoch Piper, of Camden, in the county of Waldo, State of Maine, respectfully represents:

That he has invented a new and useful mode of keeping fish, meats, etc., fresh and unchanged any desirable length of time, by artificial congelation, and that he is now engaged in making experiments for the purpose of perfecting the same preparatory to his applying for
520 letters-patent therefor. He therefore prays that the subjoined description of his invention may be filed as a caveat in the confidential archives of the Patent-Office, agreeably to the provisions of the act of Congress in that case made and provided, he having paid twenty dollars into the Treasury of the United States and otherwise complied with the requirements of said act.

ENOCH PIPER.

CAMDEN, *July* 22, 1858.

The most important use for which my invention is adapted is that of keeping salmon, which are only taken in large quantities in high northern latitudes, in the summer season, so remote from our large cities that they can be made available in a fresh state only by artificial congelation, by which means they can be kept and forwarded to the markets at any time.

The nature of my invention consists of a succession of air-tight chambers, protected from the surrounding temperature with the packing of

sawdust, or other bad conductor of caloric; these chambers may be of wood or cement, but, for cheapness and convenience, I use second-hand molasses hogsheads, or butts of the capacity of one hundred gallons or upwards, arranged perpendicularly, having a thin cylindrical cast-iron tube, ten or twelve inches diameter, securely fastened (so as to be water-tight) to the inner surface of the bottom of the butt, of sufficient length to protrude some six inches through a top cover of the butt; this tube is charged at top with the mixture of one part salt and from two to three fine ice, a small lead pipe passing underneath at the foot of the pipe, having a cock or cork at the external orifice, sieves to draw off the pickle just previous to each successive charge, allowing the contents of the tube to settle down; two successive charges will bring the temperature of the chamber 10 or 15° below the freezing-point of water in about twenty-four hours, indicated by a thermometer, which is introduced into the chamber at the top through a small aperture for the purpose of ascertaining the temperature of the chamber at any time;
521 the salmon are then introduced into the chamber, suspended upon hooks, to preserve their shape until frozen; the first batch should not contain more than fifty or sixty pounds, as that quantity will raise the thermometer directly from 20° to 28° Fahrenheit, which is about their freezing-point, and will continue at that temperature for about twenty-four hours; after which the temperature generally falls to 20° in the next twenty-four hours, when they are frozen; the second batch may then be introduced, after which each successive batch may be doubled every forty-eight hours; the frozen salmon may be placed close together, allowing more room for those suspended. Several of the chambers should be put in operation, so that a sufficient quantity may be in readiness to fill a chamber at once with frozen salmon; after which one charge in twenty-four hours will suffice; so also less material and a much smaller proportion of salt will answer to keep them from 20° to 25° any length of time.

What I claim as my invention, and desire to secure by letters-patent, is the art of keeping fish, meats, etc., any length of time by the practical application of artificial congelation, using for that purpose any frigorific substance or mixtures furnished by chemical science in connection with the apparatus herein described, or any other substantially the same that will create, conduct, or communicate that degree of cold in the chambers which will produce the intended effect.

ENOCH PIPER.

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523 RESPONDENTS' PROOF.

Deposition of Joseph H. Racey, jr., taken, subscribed, and sworn to before R. E. Stilwell, examiner.

SATURDAY, *July* 18, 1868—10 a. m.

Present, counsel for respective parties.

JOSEPH H. RACEY, jr., being duly sworn as a witness on the part of the defendants, deposes and says:

Int. 1. What is your name, age, place of residence, and occupation?

Ans. Joseph H. Racey, jun.; forty-two years of age, past; and reside at 219 East Twelfth street, New York City; fish-dealer.

Int. 2. Have you now in use an apparatus for the freezing of fish and other animal substances; if yea, where is it situated?

Ans. I have; it is in Centre Market, New York City.

Int. 3. When did you first attempt to freeze fish artificially?

Ans. In 1856 and 1857.

Int. 4. Where?

Ans. In Centre Market.

Int. 5. Will you please state what you then did?

Ans. I froze Spanish mackerel, the first fish I ever froze. Spanish mackeral run from one and a half pounds to four pounds; some weigh as high as seven pounds; but the general run is about three and a half pounds.

Int. 6. Will you please state the manner in which you first froze Spanish mackerel, as stated in your last answer?

524 Ans. The box I built first to keep lobsters; at that time I used to sell from 500 pounds to 1,500 pounds of lobsters on a Saturday, and in order to keep the water off the lobsters, I placed a pan on the top of the box; the inside measurement of the box was seven feet long, seven feet high, and five or six feet wide. I erected a zinc pan inside the box on the top part, and making a shoulder so as to nail it, and made the pan slanting from the top, and went down in the center on to the rear of the box; there was a joist on the top in front of the pan to hold it up. I have a model of the box, which I will put in as an exhibit.

(The exhibit not being here, counsel for the plaintiff requests witness to proceed with his description of the box in which he froze Spanish mackerel.

The witness makes no answer, it being now 20 minutes after 12 o'clock p. m.

Plaintiff's counsel protests against the delay, and requests defendants' counsel to continue the examination, or to allow plaintiff's counsel to commence the cross examination.

Repondent's counsel replies that having sent for the exhibit, which will arrive in a few minutes, he proposes to resume the examination as soon as the exhibit arrives.

Counsel for plaintiff protests against witness examining model before completing description.

Witness resumes:)

I produce model of ice-box referred to above.

(Model marked "Piper *vs.* Brown, defendants' Exhibit No. 2, R. E. Stilwell, examiner."

At this point plaintiff's counsel objects to the examination of this witness, on the ground that another of defendants' witnesses is present.

The counsel for the respondent does not object to the separation of the witnesses, provided it be applied to both sides, so that no person who is to be examined or re-examined shall remain in the room during the examination of any other person hereafter; and also provided

525 that if any person does remain in the room during the examination of any other person, he shall be excluded from being hereafter examined or re-examined in this cause.

Before the last proposition by respondents' counsel was made, the plaintiff's counsel requested a witness for respondent, who was present, to withdraw from the room during the examination of witness; said witness was detained by respondents' counsel and remained; thereupon the plaintiff's counsel refused to go on until the question of the withdrawal of the witness should be passed upon by the commissioner taking the evidence, and a postponement then took place for that purpose. After the postponement, the respondents' counsel made the last above proposition.

Plaintiff's counsel asks respondents' counsel if his proposition is in-

tended to apply to experts as well as other witnesses, and offers to accept the proposition if it does not include experts.

Defendants' counsel makes no reply.

Witness resumes:)

I put a layer of ice in first, and then a layer of Spanish mackerel, and so on until I got it up nearly to the pan, with ice ground by a machine. In the morning when I came there, the mackerel nearest the pipes and pan were most frozen. In the top pan I put salt and ice—ground ice and salt mixed. In 1857 I tried it on one salmon. On the 29th day of April or June, 1857, I shipped the salmon to General Sickles at Washington. The salmon was not frozen in the style we freeze them now; the salmon was very hard but would give; it was frozen to a certain extent. I continued the same process for three years, 1856, 1857, and 1858. I sold some of the mackerel to W. M. Rogers & Co., Fulton Market. I sold some to Moon, Lamphier & Co., of Fulton Market. Those mackerel which I sold to Moon I bought for eight cents or ten cents per pound, and sold them back for forty cents or forty-five cents. Each morning I took out mackerel the top layer was most frozen; the top parts of the fish; all mackerel which were bare w*as* frozen;
526 the portions which touched the ice were not frozen; that which was above was. I also sold some to Mr. John Hawkes, Washington Market. Mr. Penniman also bought some, as did also Judge Hitchcock. That is all I wholesaled I can think of, and these I sold at from forty cents to fifty cents per pound. I retailed a great many at one dollar per pound. I have frozen other fish, such as kingfish and Lafayette. I also froze soft-shell crabs there, and did not think it would kill them. I put them in alive and found them all dead and stiff in the morning. During the season I have frozen shad and almost all that kind of fish in the same way as the mackerel. By using the salt with ice in the pan I found the ice in the box did not melt so soon.

Int. 7. If you have not examined the exhibit since produced by you, will you now proceed to describe the internal arrangement of the box in which you froze fish as above described?

Ans. I have not examined the exhibit since it was produced. To the best of my recollection, the box was of the size previously mentioned. The box inside was furnished with a pan similar to the one now before you, with the exception of a flange coming out on the under side, and a joist crossways under the front of the pan, and from that pan there were two pipes running down the sides of the box from the pan through the box-bottom. The two pipes leading from the pan were in the corners at the back of the box, from the bottom of the pan.

Int. 8. How were the lids or openings to the box and pan arranged?

Ans. There was one lid dropped down from the front, and another lid on the top about the same size as the one in front; the edge of the pan was projecting half way under the top lid; the box was made of two-inch lumber, all through clear plank; there was no double wall. I used to put a blanket on the top and front of box under the lids, so as to fit them tight.

Int. 9. When the pan was filled with ice and salt, and the lids closed, was there any contact between the air in the preserving-chamber and the ice and salt in the pan?

Ans. No, sir; that is why I used the blanket to make it fit tight all over.

527 Int. 9*a*. Refer to the Exhibit No. 2, and state in what, if any particulars, it differs from the original internal construction of the box used by you.

(Exhibit handed witness.)

Ans. The edges of the pan were turned over the top parts of the side walls and nailed on so as to form a flange. There was a joist bevelled off so as to fit under the mouth of the pan; the joist rested on two pieces of two-inch stuff nailed to the sides; the edge of the pan was fastened with copper tacks to the joist.

Int. 10. Were there any openings in the pipes except at the top and bottom?

Ans. No, sir.

Int. 11. When the pan was filled with salt and ice, did you observe any peculiar collection on the pan or pipes? If so, what?

Ans. I found the pipes, where they did not touch the ice, were coated with frost, as also the pan on the inside of the chamber. The greatest was on the pipes at about one to two feet from the pan.

Int. 12. According to the best of your present recollection, when did you first freeze fish in that apparatus?

Ans. In the latter end of 1856.

Int. 13. Did you or not continue to use it during the years 1857 and 1858 for the purposes and substantially in the manner as before stated by you?

(Objected to.)

Ans. Yes, sir.

Int. 14. When first did you build or erect any apparatus now used by you for that purpose?

Ans. In the latter part of 1859.

Int. 17. Where did you build it?

Ans. In Centre Market, New York City.

Int. 18. Who did the carpenter-work on it for you?

Ans. John Danford and a man named Smith in his employ.

Int. 19. About what was the size of that apparatus on the outside?

Ans. Seven feet each way.

Int. 20. How were the walls constructed?

528 Ans. Twelve inches thick each way, top, sides, and bottom, double walls. Ten-inch scantling at the corners and in the sides, with one-inch plank on each side of the scantling, so as to make the space between inner and outer walls, top, sides, and bottom, about ten inches. This space was filled with sawdust.

Int. 21. How was the box entered?

Ans. By a door in the front.

Int. 22. What was placed within that box, if anything?

Ans. Six pipes connected with two pans at the top entering into two horizontal pipes at the bottom elevated about one inch to a foot. The bottom horizontal pipe had two openings; the top opening was used for drainage, the bottom to clean it out.

Int. 23. Of what was the pans and pipe made?

Ans. Made either of galvanized iron or zinc I think galvanized iron.

Int. 24. Were there two pans at the top?

Ans. Yes, sir; about two feet wide by five feet long and two feet deep.

Int. 25. Where were they placed with reference to the side-walls?

Ans. Twelve inches from the walls, and the ends of them go up close to the ends of the box inside.

Int. 26. How were the pans fastened, if at all, to the box?

Ans. They were nailed into apertures made in the sides of the upper walls, both sides and ends.

Int. 27. How far below the upper inner wall did the pan extend into the chamber?

Ans. About one foot.

Int 28. How far apart were these pans from each other?

Ans. From two and a half to three feet.

Int. 29. Was it from these pans the pipes previously referred to by you descended?

Ans. Yes, sir.

Int. 30. How, if at all, were the pipes fastened to the pans?

Ans. Soldered. I think there are collars by which the pipes connect with the pan being soldered and made air-tight.

529 Int. 31. About what was the size of the pipes at their junction with the pans?

Ans. I think sixteen inches in diameter at the top and eight inches in diameter at the bottom.

Int. 32. Are they tapering in their form?

Ans. Yes.

Int. 33. How many pipes are there to each pan?

Ans. Three.

Int. 34. Does each of the pipes enter into horizontal pipes at the bottom?

Ans. Yes, sir.

Int. 35. How many horizontal pipes are there?

Ans. Two.

Int. 36. When entering the door of the chamber, in what position are the six pipes relatively to the door?

Ans. Three on each side of the door.

Int. 37. As the pipes pass through the chamber, are they tight or have they openings in them?

Ans. They are air-tight.

Int. 38. You say the horizontal tubes have two openings at one end; was not one at the upper and the other at the lower part of the end of the tube?

Ans. Yes, sir; one, the lower, is about a three-inch pipe, and is used for cleaning, and when not so used is plugged up. The upper is about a one-inch pipe, and has an elevation of about an inch or an inch and a half, so as to keep the pipe full of water and prevent atmospheric air from entering.

Int. 39. About what was the size of the horizontal tubes?

Ans. I think from eight to twelve inches.

Int. 40. For what did you use this apparatus?

Ans. To freeze fish so as to keep a supply ahead.

Int. 41. How did you reduce the temperature in the preserving-chamber?

Ans. By putting salt and ice in the pans and letting it run down into the pipes.

530 Int. 42. Was or not the ice broken or crushed before it was placed in the pans?

Ans. Yes, sir; it was crushed by machinery, and mixed with salt in a box, and then carried up in baskets and dumped into the pans.

Int. 43. What openings were there in the top so as to enable you to place the ice and salt in the pans?

Ans. Two openings, two feet wide and five feet long, covered with two wooden covers, two inches thick, made of one-inch battens crossed and screwed together; and when we change the pans we lift the covers off like hatches.

Int. 44. When the pans and pipes are filled with ice and salt, is there any contact between the air of the preserving-chamber and the ice and salt in the pans and pipes?

Ans. No, sir.

Int. 45. You have said this apparatus was built in 1859; was it completed during that year and put into use?

Ans. Yes, sir.

Int. 46. Were you enabled to freeze fish and other animal substances in the preserving-chamber by filling the pans and pipes with salt and ice, as you have previously stated?

Ans. Yes, sir; the first I froze in the apparatus in question was striped bass.

Int. 47. Did you put any ice in the preserving-chamber?

Ans. No, sir.

Int. 48. How low could you reduce the temperature in the preserving chamber by using ice and salt in the pans and pipes as you have described?

Ans. I have had it as low as ten degrees below freezing-point in this apparatus.

Int. 49. Have you used the apparatus, described by you as built in 1859, for the purpose of artificially freezing, ever since it was so built?

Ans. Yes, sir; each year.

Int. 50. Was or not this said apparatus originated and invented by you?

531 Ans. Yes, sir; I have never seen any model or any other machine like it until Mr. Piper showed me his drawings attached to his patent last winter.

Int. 51. When the apparatus was originally made, were or not the lower horizontal tubes open into the preserving-chamber, that is, placed above the floor?

Ans. Yes, with the exception of a false floor or platform I put in. I thought there might be leakage, and placed boards at a short distance apart across the floor.

Int. 52. How were fish placed in the preserving-chamber to be frozen?

Ans. The maker screwed seventy-two hooks into the ceiling of the chamber, and we strung the fish on strings and hung them on the hooks. I found this mode a failure, and I then placed the fish on racks placed horizontally like trays in the chamber. When I said the first method was a failure, I meant that it was inconvenient, as I had not all the room I wanted. After the fish were frozen on the racks I piled them behind the pipes.

Int. 53. What was the external appearance of the pans and pipes when filled with ice and salt, as shown on the inside of the chamber?

Ans. They were coated with frost.

Cross-examined by Mr. Cutter:

Cross-int. 54. Have you made any changes in the apparatus since it was built in 1859, except those you have described?

Ans. No, sir; no alteration in the internal arrangement as described.

Cross-int. 55. What has been your business since this apparatus was built in 1859?

Ans. Fish-dealer in Centre Market, and also as dealer in statuary and pictures. I have no regular place of business except Centre Market; buy and sell other goods at auction on commission.

Cross-int. 56. Have you had a partner since 1856?

Ans. No, I was agent for my father, who was partner of Joseph Stormes.

Cross-int. 57. When were you first connected with Joseph
532 Stormes, and how long did that connection continue in the way you have stated?

Ans. First connected some time in 1864; the connection continued five months and twenty-two days.

Cross-int. 58. Have you kept books of account since you first commenced to freeze fish in your business; if so, what are they?

Ans. I have never kept books myself, but my book-keeper has. My brother kept the books in 1856, and kept them till he went to the war in 1861. He was proprietor of the business from 1858 to 1861, when the business was sold to Messrs. Moon & Lamphier. I don't know what books were kept; our business did not require many books; we simply had a slate order-book, day-book, and ledger.

Cross-int. 59. Were those books kept during the whole time that you carried on the business in Centre Market?

Ans. They were kept by my book-keeper part of the time, and part of the time by myself.

Cross-int. 60. Have you those books now, or any of them; if so, what?

Ans. I have but one—last year's ledger.

Cross-int. 61. Where are the others?

Ans. I really don't know.

Cross-int. 62. When did you last see them, and what did you do with them?

Ans. The books had good covers on them, and I employed a book binder to put new paper in; I don't know what the bookbinder did with the old paper. I think his name is Davis; his place of business was 512 Broadway.

Cross-int. 63. Who was the book keeper in 1829?

Ans. William H. Racey.

Cross-int. 64. Who was your book-keeper in 1856, 1857, and 1858?

Ans. The same as stated.

Cross-int. 65. Had you any other book-keeper than Mr. Racey from 1856 to 1861?

Ans. No, sir, except, perhaps, a man to come on Fridays or Saturdays to assist in the writing.

533 Cross-int. 66. After Mr. William H. Racey left, who was your book-keeper, and from what date to what date did he remain so?

Ans. William Reinise; he was there from the time my brother left, in 1861, and remained for about two years and six months.

Cross-int. 67. Who was your book-keeper after he left?

Ans. Mr. Stormes.

Cross-int. 68. Who after Mr. Stormes, and for how long?

Ans. I had none.

Cross-int. 69. Who kept your books after he left?

Ans. I kept them myself in my simple way.

Cross-int. 70. When did you first, after Mr. Stormes left, employ a permanent book-keeper; and, if you did employ one, what is his name, and how long has he been thus employed?

Ans. Last December, (1867;) he has been with me ever since; his name is Victor Hoffman.

Cross-int. 71. What other help do you now employ in your business in Centre Market?

Ans. Michael Downey, John Ward, and a man named Patrick—sur-

name unknown—and Michael Smith. Mr. Downey is my foreman, and has the hiring of all the others except the book-keeper.

Cross-int. 72. How long have these men worked for you?

Ans. On the 8th of next August Michael Downey has been there either three or four years; I could not say which. John Ward has been there in the neighborhood of three or four years this time, and he worked for me before from 1859 to 1861—between one and two years. Patrick has been in my employ I think two years; Michael about the same time.

Cross-int. 73. What men were in your employ immediately prior to the above?

Ans. Michael Connery, and one or two others, whose names I cannot remember.

Cross-int. 74. Who preceded Michael Downey as your foreman?

Ans. No one. My business was comparatively small, and I did not require any foreman. I was my own foreman.

Cross-int. 75. For the years immediately preceding your employ-
534 ment of Michael Downey, how many hands did you employ in your business in Centre Market?

Ans. One or two persons. On Friday we generally employed an extra hand.

Cross-int. 76. In 1862 how many hands did you employ in your business in the market?

Ans. Three, and an extra one on Friday.

Cross-int. 77. State their names, and how long they worked for you.

Ans. Mr. Reinise. The names of the others I do not remember.

Cross-int. 78. How long did your hands employed in 1862, except Mr. Reinise, work for you?

Ans. Five to nine months each.

Cross-int. 79. Have you any means of ascertaining their names?

Ans. No, sir.

Cross-int. 80. Do you know any person who is or was acquainted with them?

Ans. No, sir.

Cross-int. 81. How many hands did you employ in the same business in 1859?

Ans. William H. Racey was proprietor, and I did not employ any.

Cross-int. 82. How many were employed by him in that business, and what were their names, and how long employed?

Ans. Michael Connery was one, and, in the latter end of the year, John Ward. I think Connery came to work for my brother in the latter part of 1858, and worked till 1861, in April, when he went to the war.

Cross-int. 83. Were there any other hands, whose names you now remember, who were employed in that business from the beginning of 1858 to the beginning of 1861?

Ans. In the latter end of 1860 and in 1861, Michael Downey, to skin eels.

Cross-int. 84. How long after the purchase of this business by Moon & Lamphier did they carry on the business?

Ans. They never carried it on at all.

Cross-int. 85. How long were they the owners of the business?
535 Ans. They never were the owners.

Cross-int. 86. What had they to do with it?

Ans. They had a chattel mortgage on all the property.

Cross-int. 87. How long were they thus connected with the business, and to whom did they sell out, and when?

Ans. Between two and three years; they sold out to my father. I have no recollection of the time when, but think it is between three and four years since.

Cross-int. 88. How long has your father been connected with this business, and is he still connected therewith?

Ans. He owned the place and business from two or three years ago, and held it for somewhere about three years.

Cross-int. 89. Who was the lessee from the city during the period between the commencement of 1858 till your father ceased to be interested?

Ans. I have owned the right of the stall known as No. 13, since 1845, to the present time.

Cross-int. 90. With which stall has your freezing-apparatus been used in connection?

Ans. With both stalls—that is, Nos. 15 and 17.

Cross-int. 91. Where has your freezing-apparatus been located, with reference to these stalls?

Ans. In cellar No. 11, Centre Market. I think that is the number.

Cross-int. 92. Have you had the exclusive use of this cellar?

Ans. Yes.

Cross-int. 93. What other apparatus have you had in your cellar since 1856, to the present time?

(Objected to as immaterial.)

Ans. (Witness declines to answer, stating that so far as freezing-apparatus is concerned he is willing to give all the information in his power.)

Cross-int. 94. State whether you have had any other freezing-apparatus, than the one described as built in 1859, in the said market, or cellar underneath the market, since that time.

Ans. Yes.

536 Cross-int. 95. State how many and when built.

Ans. I built one; it has been built between one and two years.

Cross-int. 96. Have you had an eel-tank in that cellar since the beginning of 1859? And if yea, when was that built?

(Objected to as irrelevant and immaterial.)

Ans. I decline to give any answer, as it has no connection with a freezing-apparatus.

Cross-int. 97. Do you decline then to state when the tank was built, if there was one?

Ans. I think it was built in 1861 or 1862.

Cross-int. 98. Is the eel-tank there now?

(Defendants' counsel objects to any questions referring to any eel-tank or as to private business to witness, unless it be connected with the freezing of fish or incidental or collateral thereto.)

Ans. Yes, sir.

Cross-int. 99. Is the eel-tank referred to collateral to the apparatus described by you as built in 1859?

Ans. No, sir.

Cross-int. 100. Is it side by side with the freezing apparatus?

Ans. It is three or four feet from it in the rear of the freezer.

Cross-int. 101. Is there any wood-work or frame-work connecting the two?

Ans. There is merely a platform between them, approached by steps, which platform is used for charging the ice-box of the freezer; it has no connection with the eel-tank.

Cross-int. 102. What carpenter constructed the eel-tank and the steps and platform referred to?

Ans. A man named Smith, in the employ of Danford.

Cross-int. 103. What is his full name, and where does he reside?

Ans. I don't know his full name nor where he resides. Mr. John Danford has his place of business at 59 Spring street.

Cross-int. 104. Whom did you employ to build the tank and steps?

537 Ans. Mr. John Danford.

Cross-int. 105. When did you last see Smith, and where?

Ans. I saw him about two or three years since at Centre Market.

Cross-int. 106. Have you ever known where he lived or did business?

Ans. Yes, sir. He was in the employ of Mr. Danford. I do not know where he lived; he worked at 59 Spring street.

Cross-int. 107. Was any other person employed by you or Danford in the building of the steps in 1859; and if so, who?

Ans. No one to my recollection.

Cross-int. 108. Where is Mr. Danford now?

Ans. I do not know where he resides, but his place of business is 59 Spring street, New York City.

Cross-int. 109. Where does Mr. William H. Racey reside?

Ans. He resides at 100 South Fourth street, Williamsburgh, New York.

Cross-int. 110. Where does Mr. Reinise reside?

Ans. Mr. Reinise is dead; he died before Stormes came with me.

Cross-int. 111. Where does Stormes reside?

Ans. I do not know. I have not seen him for between three and four years.

Cross-int. 112. Where does Connery reside?

Ans. He resides in New York, and was in attendance as a witness both to-day and yesterday.

Cross-int. 113. Can you state the name of any other person employed by you in your business in Centre Market from the beginning of 1859 to the present time?

Ans. I do not remember the name of any one excepting one just struck me, Samuel A. Grose, who is now dead.

Cross-int. 114. When did he work for you, and when did he die?

Ans. He came home in 1862 from the war, and worked for about from six to nine months. I think he died in 1864.

Cross-int. 115. Will you state how many hands were employed by you in 1863?

Ans. Reinise, and one other named Swet or Scully. Scully is in

538 California. I last saw him in the market about six months ago or earlier.

Adjourned till Monday, July 20th, at 10 a. m.

The testimony of Mr. Racey was resumed on the 23d of July, 1868, at 7½ p. m.

Cross-int. 116. Is the freezer, which you say was built in 1859, now standing in your place in Centre Market, unaltered from what it was as originally built?

Ans. Yes.

Cross-int. 117. Are you willing to have it examined by Mr. Piper and his counsel, and his expert witness, Mr. Renwick, or either of them, and which?

Ans. I have no objection.

(Counsel for the plaintiff requests of the counsel for the respondent to state whether he has any objections to such an inspection, and if not, to name a time when it may be had.

(Counsel for the defendants will accompany counsel of the plaintiff to inspect Mr. Racey's apparatus on the afternoon of the 24th instant, at half past four o'clock.)

Cross-int. 118. Can you name any person to whom you exhibited or explained, at the time, the ice-box you had in use in 1856, 1857, and 1858, and your method of using it?

Ans. I explained it to Mr. William Doremus (heretofore written Reinise) for one, and my brother, W'm H. Racey; those are all I can recollect. Mr. Doremus is now dead. He lived in New York City.

Cross-int. 119. Can you name any person to whom you exhibited or explained, at the time, your first freezing-apparatus, and your method of using it?

Ans. James Burns, councilman, now dead, Charles Haggerty,
539 William H. Racey, and all hands at work for me at that time, who were Michael Connery and John Ward. Councilman Burns and Charles Haggerty came together. Haggerty ground some ice and helped to charge the freezer. They were the two first I showed it to. Moses Raynor, the man who dug the cellar out, also saw it.

Cross-int. 120. Who did the carpenter's work on that freezer?

Ans. John W. Danford, and a man with him called Smith, now dead.

Cross-int. 121. Who did the plumbing work for that apparatus? By that I mean who made, or fitted or put up, the metallic pipes and pans, making a part of the apparatus?

Ans. I don't know the man's name; I gave him money, and he bought the materials, and he was away some eight or ten days, and came back and got more money, and then made the pans and pipes in my cellar, and fitted them in and finished up the job.

Cross-int. 122. Was he the same man who made the pans and pipes for the ice-box you spoke of as made in 1856 or 1857?

Ans. Yes.

Cross-int. 123. Have you ever seen him since he did this work on the freezer, in 1859?

Ans. Yes.

Cross-int. 124. When?

Ans. It might have been a few months afterwards.

Cross-int. 125. Do you know where he lived?

Ans. No.

Cross-int. 126. Do you know whether he worked on his own account, or was employed by any one else?

Ans. When I first saw him he was putting a leader on my house, I think, in 1854 or 1855; he worked then for a man who kept at 94 Mercer street.

Cross-int 127. What was the name of the man in Mercer street?

Ans. I really don't know.

Cross-int. 128. Do you know where the man can now be found who did this plumbing or iron work for you?

Ans. No, sir.

540 Cross-int. 129. Have you seen or heard of him since two or three months after the building of your first freezer?

Ans. No, sir.

Cross-int. 130. How came you to employ him to do this work?

Ans. Because I wished to have it done, thinking he would do it cheaper than any one else.

Cross-int. 131. You say that this man made the pans and pipes in your cellar. Did he do this both in the case of the ice-box of 1856 and 1857, and the freezer of 1859?

Ans. He did not in the case of the ice-box, because I did not then have the cellar.

Cross-int. 132. Where did he do the metal-work for the ice-box?

Ans. Either at 207 Sullivan street or at my stable in Amity place; I could not say which. To the best of my belief, it was done in one of those two places.

Cross-int. 133. What was 207 Sullivan street at that time; how was that place occupied?

Ans. My stable.

Cross-int. 134. You had two stables then, one in Sullivan street and one in Amity place?

Ans. Not at one time. One, the first, in Amity place, and then in Sullivan street.

Cross-int. 135. Did this man make and fit in your cellar in Centre Market the metal-work for your first freezer?

Ans. Yes.

Cross-int. 136. Who furnished the material for this job, you or he?

Ans. I gave him the money on two occasions, and he bought it.

Cross-int. 137. What did he buy—sheet-metal?

Ans. He bought galvanized iron, solder, and copper tacks; the galvanized nails I bought myself, as also the hinges.

Cross-int. 138. What did he have to work with in the cellar, in making up the pans and pipes?

Ans. He had one large piece of iron, oval on the top, which I
541 believe he shaped them on; he had two or three pairs of shears, soldering-irons, punches, mallets, and other utensils used for such business; I don't know the names of them.

Cross-int. 139. Who did the metal work for your second freezer, which was put up last year?

Ans. A man whose name is to me unknown, who keeps in Grand street, New York, near the ferry.

Cross-int. 140. Was his name Reid?

Ans. I don't know.

Cross-int. 141. Where was the metal-work for this second freezer done?

Ans. The troughs and pipes were made in his place and fitted together in my cellar.

Cross-int. 142. What has become of the ice-box said to have been made in 1856 or 1857?

Ans. I tore it down.

Cross-int. 143. When?

Ans. In 1859 or 1860.

Cross-int. 144. Before you commenced building the first freezer?

Ans. After I had the freezer finished I tore down the ice-box.

Cross-int. 145. Did you employ any one specially for that purpose?

Ans. No.

Cross-int. 146. Who tore it down?

Ans. I did.

Cross-int. 147. What did you do with it?

Ans. I burnt up all but the bottom.

Cross-int. 148. What did you with that?

Ans. I pitched it in the street.

Cross-int. 149. What did you do with the metal part?

Ans. Pitched it also in the street.

Cross-int. 150. Is the existing arrangement of the first freezer and of the eel-tank, and the steps and platform between them, the same that has always been in the cellar since the eel-tank was made?

Ans. Yes, excepting the steps. A second new platform and set of steps have been made. The freezer has been moved from the
542 middle of the cellar up against the wall. I believe the eel-tank to be in the same position it has always been in.

Cross-int. 151. What was the arrangement for mounting up to the level of the pans for the purpose of charging them as the freezer originally stood before the eel-tank was built?

Ans. Steps and platform.

Cross-int. 152. How were the steps and platform supported?

Ans. In the same way, on a joist frame-work.

Cross-int. 153. Can you state the names of the parties to whom you first sold fish frozen in your first freezing apparatus?

Ans. I never delivered any fish in a frozen state when it was first built. John Itner, 108 Grand street; to the hotel at 480 Broadway, known, as the Wetmore House; and Jones & Co., 432 Broadway, and His Lordship's Larder, 401 Broadway; Jacob L. Seixas, 139 E. 19th street; Jonas M. Phillips, 36 W. 12th street; Montague Hendricks, 401 Fifth avenue, and others have purchased fish from me in a frozen state—frozen in this apparatus.

Cross-int. 154. Were the persons the first whom you remember who purchased fish from you in a frozen state?

Ans. The first people to whom I first sold fish, frozen out of this freezer, were all Hebrews. I don't know that they ever saw them in a frozen state, as I thawed them out in ice-water before I cleaned them to deliver.

Cross-int. 155. When did you first sell to Itner and others, mentioned in your last answer but one, fish in a frozen state, frozen in your first freezing-apparatus?

Ans. The first fish I sold to Mr. Itner, to best of my knowledge, was Spanish mackerel and salmon, as far back as four years since; might be only two years; I could not state exactly, because I usually thawed them out before I put them on my stand for sale.

Cross-int. 156. Do you mean that you have not sold fish in a frozen state, frozen in that apparatus, till within about four years or two years?

Ans. I sold frozen fish the season it was built.

543 Cross-int. 157. To whom did you sell fish, in a frozen state (frozen in that apparatus) the season it was built, or within three years thereafter?

Ans. I could not tell the names of the purchasers; they were sold off my stand in the market; it was cold weather, and people could not tell where it was frozen—in my freezer or elsewhere.

Cross-int. 158. How were you enabled to fix the building of your first freezer as in 1859?

Ans. I leased a house in Houston street, and had some alterations made in it that year, and soon after I had finished the house I had the first freezer built.

Cross-int. 159. How do you know that you had the first freezer built after you had finished that house and soon after?

Ans. One helps to recall the other.

Cross-int. 160. Why?

Ans. I wish to give all the information I can, but I do not understand you.

Cross-int. 161. Why does the knowledge that you finished the house in 1859, help you to remember that you had the first freezer built soon afterwards? What is the connection between the two things which enables you to say, because the house was finished in 1859, therefore the freezer was built soon after?

Ans. Mr. Danford did some work in the house somewheres about the time that he commenced the box, and took a tree away from the yard.

Cross-int. 162. Is that the only way you have of connecting the two events, so that from knowing the time of finishing the house you can know the time of building the freezer?

Ans. I have another; Councilman Burns was not sworn in before January 1, 1860, and he saw my freezer before that, in company with Charles Haggerty.

Cross-int. 163. Have you ever sold frozen fish to Rogers & Co., of Fulton Market; if so, when and how extensive have such sales been?

Ans. I have sold them fish that had partly frozen, frozen on the top in my first freezer. I have never sold them any out of the box which is now standing in the cellar. By my first freezer, I mean the
544 ice-box built in 1856 and 1857. I sold them some Spanish mackerel frozen in the last-named ice-box, not frozen to the extent to which we now freeze them in the two freezers I now have.

Cross-int. 164. To what extent was the fish frozen which you sold to them?

Ans. All the top parts of those fish that were not covered with ice were frozen, and also those near the waste-pipes where the ice had melted, leaving the top part uncovered—that part I found frozen.

J. H. RACEY.

Deposition of Moses Raynor, taken, subscribed, and sworn to before R. E. Stilwell, examiner.

MONDAY, *July 20th*, 1868—10 a. m.

Present, counsel for respective parties.

MOSES RAYNOR, being duly sworn as a witness for the defendants, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Moses Raynor; age, past fifty-three years; residence at 153 Mulberry street; watchman in Centre Market.

Int. 2. In 1859, where did you reside, and what was your occupation?

Ans. I resided at 155 Spring street, New York City, and was watchman in Centre Market.

Int. 3. Were you acquainted with Joseph H. Racey, jr., in 1859? If yea, did you during that year do any work for him, and what was it?

Ans. I did know him and did do work for him. I dug down the cellar one foot—I mean the cellar in Centre Market occupied by him at that time. Mr. Racey paid me for doing it.

545 Int. 4. Can you state about how large the space was that you thus dug down?

Ans. About fifteen feet square. I dug down one foot all round the wall so as to make a place for Mr. Racey to put his ice-box in.

Int. 5. Did you know that an ice-box was placed there by Mr. Racey after you had completed digging?

Ans. Yes, sir.

Int. 6. Do you remember to have seen the ice-box there during any time in 1859?

Ans. Yes, sir; in the latter part of 1859.

Int. 7. Do you know who built it?

Ans. Mr. Danford built it.

Int. 8. Did you see the inside of it?

Ans. I was outside and looked in. I never was inside it.

Int. 9. When you thus looked inside, what did you see there?

Ans. I saw some pipes, looked like galvanized iron or zinc pipes.

Cross-examined by counsel for the complainant:

Cross-int. 10. Have you ever done any work for Mr. Racey since you dug down his cellar for him?

Ans. Yes, sir.

Cross-int. 11. More than once?

Ans. One day only.

Cross-int. 12. When was that, and what was it?

Ans. About two years ago. I won't be right certain. I mixed some cement for him to put in behind his stand to make a hard floor.

Cross-int. 13. Did any one help you in digging out the cellar?

Ans. No, sir.

Cross-int. 14. How long did that job take you?

Ans. Over two days.

Cross-int. 15. Do you remember what you were paid for it?

Ans. I think it was two dollars, won't be positive.

Cross-int. 16. Have you been accustomed, during the last ten
546 years, to do from to time odd jobs not connected with your employment as watchman?

Ans. Never but twice,-and that was when I dug the cellar and when I mixed the cement.

Cross-int. 17. You mean that these were the only odd jobs you have done during the last ten years, whether for Mr. Racey or for anybody else?

Ans. I have been at work for others; those were the only jobs for him.

Cross-int. 18. Have you done such jobs for other people than Racey quite frequently during the last ten years?

Ans. Not such jobs as the one referred to.

Cross-int. 19. What kinds of jobs have you done for other people during the last ten years?

Ans. Opened oysters. That is the only other kind of jobbing I did.

Cross-int. 20. And have you been employed opening oysters quite frequently during the last ten years? If so, give us an idea how often you have been so employed during that time.

Ans. I have been three winters at it. I mean the winters of 1865, 1866, and 1867–'8.

Cross-int. 21. Then, if I understand you, from 1859 down to 1865 you did not do any odd job for anybody; is that so?

Ans. I have done little jobs for other men in the market; Jansen, for instance; Mr. Laylor; Mr. Lawrence. I don't think of any one else.

Cross-int. 22. What sort of jobs were these that you did for these persons?

Ans. I put up flags when they had prize-beef there. This was the only kind of job I did for these persons.

Cross-int. 23. Have you been accustomed to keep any diary, note-book, or memorandum-book, during the last ten years, showing how you were employed from time to time?

Ans. No, sir.

547 Cross-int. 24. Will you tell us how you know that you dug out that cellar for Mr. Racey in the year of 1859, and not in the year 1860?

Ans. I lived in Spring street in 1859.

Cross-int. 25. Where did you move to from Spring street?

Ans. To Elm street.

Cross-int. 26. How long did you live there?

Ans. One year.

Cross-int. 27. Where did you move to then?

Ans. To Crosby street, near Spring.

Cross-int. 28. How long did you live there?

Ans. One year.

Cross-int. 29. Where did you move to from Crosby street?

Ans. To Marion street, No 4.

Cross-int. 30. How long did you live there?

Ans. Two years.

Cross-int. 31. Where did you move to from Marion street?

Ans. To Broome street.

Cross-int. 32. How long did you live there?

Ans. One year.

Cross-int. 33. Where did you move to from Broome street?

Ans. To Mulberry street, where I now live, and have been since.

Cross-int. 34. How long have you been living in Mulberry s't?

Ans. Three years.

Cross-int. 35. In what year, and what time of the year, did you move to Mulberry street?

Ans. I think it was in May, 1865.

Cross-int. 36. Do you remember in what year you moved to Elm street from Spring street?

Ans. In 1860, as near as I can tell.

Cross-int. 37. How long had you lived in Spring street when you made that move?

Ans. Four years.

Cross-int. 38. Is the fact that you lived in Spring street in 1859 the only fact which helps you to recollect that you dug out Mr. Racey's cellar in the year 1859?

Ans. Yes, sir.

548 Cross-int. 39. Who was your landlord in Spring street?

Ans. Mr. Bailey. I don't remember his full name.

Cross-int. 40. Do you know where Mr. Bailey now lives?

Ans. No, sir.

Cross-int. 41. Have you his receipts for rent, or any of them?

Ans. They may be about the house somewhere, but I cannot say for certain.

Cross-int. 42. Will you search and see if you can find any of them and bring them here if you can?

Ans. I will.

Cross-int. 43. How do you know that you were living in Spring street and not in Elm street when you dug out Mr. Racey's cellar?

Ans. The reason why is that I got some old lumber out of the cellar and took it home to Spring street.

Cross-int. 44. What did you do with it?

Ans. Burnt it for fire-wood.

Cross-int. 45. How do you know you did not carry that lumber home to Elm street and burn it there?

Ans. Because I know that I carried it up Centre street, and across Broome street to my home in Spring street.

Cross-int. 46. How did you carry it home?

Ans. On my back.

Cross-int. 47. Who employs and pays you as watchman?

Ans. The butchers and hucksters; persons who have stalls in the market contribute to the expense.

Cross-int. 48. Have you looked into this ice-box of Mr. Racey's since 1859?

Ans. Yes, two or three different times or more.

Cross-int. 49. When was the last time that you remember?

Ans. About two months ago, as near as I can say.

Cross-int. 50. When was the first time after 1859 that you had your attention called to the time when you dug out the cellar for Mr. Racey?

Ans. From the time I dug it out, I never paid much attention to it. I only saw it (the ice-box) there from time to time.

549 Cross-int. 51. When was the first time, as you remember, that you had any occasion to call to mind the time of digging out that cellar?

Ans. I can't tell any more. I know it was before the war, and in 1859, as near as I can recollect from where I lived.

Cross-int. 52. When were you first inquired of as to the date of doing this job?

Ans. About a week ago.

Cross-int. 53. By whom?

Ans. Mr. Racey, (Joseph H. Racey, jr.)

Cross-int. 54. Do you know the names of any men who were employed by Racey at the time you dug out the cellar?

Ans. William Racey was there and Michael Connery.

Cross-int. 55. Do you know where Michael Connery lives now?

Ans. No.

Cross-int. 56. Who gave you the directions for digging the cellar, and who superintended the work?

Ans. Joseph H. Racey gave me the directions; nobody superintended it.

his
MOSES + RAYNOR.
mark.

Deposition of Michael Connery, taken, subscribed, and sworn to before R. E. Stilwell, examiner.

TUESDAY, *July 21st*, 1868.

MICHAEL CONNERY, being called and duly sworn as a witness for the defendants, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Michael Connery; twenty-four years of age; reside at 198 Elm street,; by occupation am a street railroad driver on the Grand street and Cross-Town Line.

Int. 2. Are you acquainted with Joseph H. Racey, jr., of Centre Market, fish-dealer, etc., and were you in his employ in 1858 and

550 1859?

Ans. Yes, sir.

Int. 3. What then was his business, and where?

Ans. Fish business in Centre Market.

Int. 4. While you were in his employ did he construct in the cellar in

Centre Market a freezer? If yea, when, as nearly as you can remember?

Ans. He did construct a freezer, and to the best of my remembrance it was in 1859 or 1860.

Int. 5. Do you know who built it for him?

Ans. A man named Danford.

Int. 6. Was there any digging done in the cellar before the freezer was built?

Ans. There was.

Int. 7. Who did it?

Ans. A man named Raynor.

Int. 8. Was it the man who has been examined as a witness here to-day?

Ans. Yes, sir.

Int. 9. Did you go to the war?

Ans. Yes, sir.

Int. 10. What year.

Ans. In 1861. In October, to the best of my opinion.

Int. 11. Were you with Mr. Racey until you left for the war?

Ans. I was, sir.

Int. 12. About how large was this freezer which was built for Mr. Racey in his cellar?

Ans. I think it was about eight feet long and seven feet wide on the outside.

Int. 13. How was it entered?

Ans. Through a large door in the front.

Int. 14. Describe the internal appearance as presented when entering through the door.

Ans. It was lined inside with metal; there were two pans on the top, one on each side; there were six pipes, three on each side; and there was a fall or drain pipe at the bottom.

551 Int. 15. Did you observe how the pipes were connected with the pan at the top?

Ans. They were soldered on to the bottom of the top pan.

Int. 16. Into what did the pipes enter at the bottom?

Ans. Into the drain-pipe, one drain-pipe on each side.

Int. 17. Of what were the pan and pipes made?

Ans. Of metal; looked like some kind of plated metal.

Int. 18. Were the pipes which passed down through the chamber straight or tapering in form?

Ans. Straight.

Int. 19. Were they not larger at one end than the other?

(Objected to.)

Question withdrawn.

Int. 20. Did you have any charge at any time of the filling of the pans and pipes, and the charging up the apparatus?

Ans. I did, several times.

Int. 21. With what were they filled? State as fully as you can.

Ans. With ground ice and rock-salt.

Int. 22. State how you got the ice and rock-salt into the freezer.

Ans. I first ground the ice, and I shovelled a portion of it into the freezer, and then I put a shovel-full of salt into that, and then I filled the freezer up and put another shovel-full of salt.

Int. 23. Was, or not, the salt and ice put into the pans at the top?

Ans. It was, sir.

Int. 24. Were there any stairs or ladders by which you reached the top?

Ans. There were steps and a platform at the back of the freezer.

Int. 25. When the pans and pipes were filled with the ice and salt for any considerable time, what was the appearance of the pipes as seen from the inside of the chamber?

Ans. They were all frosted on the outside.

Int. 26. Was, or not, the freezer used as soon as it was completed?

Ans. I don't think it was.

552 Int. 27. How long after it was completed was it before it was used, as you remember?

Ans. I think it was about two months.

Int. 28. What was it used for?

Ans. For preserving fish.

Int. 29. Did you ever know fish to be frozen in it?

Ans. Yes, sir.

Int. 30. Did you yourself ever put unfrozen fish into the chamber, and afterwards take them out frozen?

Ans. Yes, sir.

Int. 31. Did you have any assistant with you?

Ans. I did, sir.

Int. 32. What was his name?

Ans. John Ward.

Int. 33. When you returned from the war, were you again employed by Mr. Joseph H. Racey, jr.?

Ans. Yes, sir.

Int. 34. Do you remember when you returned?

Ans. In 1863.

Int. 35. How long did you remain with him the last time?

Ans. About three or four years.

Int. 36. During that time did you go into the freezer, charge it up, and put in and take out fish?

Ans. Yes, sir.

Int. 37. Did you observe any change or alteration in the internal construction of the freezer at any time while you were employed by Mr. Racey?

Ans. No, sir.

Int. 38. When the pans and pipes were filled with ice and salt, did the fish touch that mixture when they were placed in the preserving-chamber?

Ans. No, sir.

Int. 39. So far as you were able to observe, was there any contact between the air of the freezing-chamber and the freezing-mixture?

Ans. No, sir.

553 Cross-examination by counsel for complainant:

Cross-int. 40. What was the diameter of each of the six pipes which you say connected the pans with the horizontal pipes in the apparatus which you have described as put up by Mr. Racey in 1859?

Ans. I should think about nine inches each.

Cross-int. 41. Were there any openings in the bottom horizontal pipes?

Ans. No, sir.

Cross-int. 42. You say there were two pans on the top; how were they placed as regards the side walls of the chamber?

Ans. They were fastened from the top, not touching the side walls at all on the inside.

Cross-int. 43. How far were they from the side walls?

Ans. I should think about six or eight inches.

Cross-int. 44. You say that there was a drain-pipe at the bottom; what did this drain-pipe lead from?

Ans. From the three pipes on the inside.

Cross-int. 45. There were three perpendicular pipes on one side and three on the other, if I understand you; into what did these three pipes on each side lead?

Ans. From the pans on the top.

Cross-int. 46. That is what they lead from; what did they lead to?

Ans. They lead to the drain-pipe at the bottom.

Cross-int. 47. One drain-pipe for each set of three perpendicular pipes, or one drain-pipe for all six?

Ans. One drain-pipe for each set.

Cross-int. 48. Was there any connection from one of these drain-pipes to the other?

Ans. No, sir.

Cross-int. 49. These two drain-pipes lay horizontally in the chamber, one on one side of the chamber and one on the other?

Ans. Yes, sir.

Cross-int. 50. And did neither of them have any opening in them?

554 Ans. No, sir.

Cross-int. 51. How was the drainage done?

Ans. To the sewer on the outside; there was no opening on the inside.

Cross-int. 52. Was there any outlet from either of these horizontal pipes?

Ans. There was an outlet on the back of the box, where the drain went out.

Cross-int. 53. An outlet from what?

Ans. From the two drain-pipes on the inside.

Cross-int. 54. Did you see the outlet?

Ans. I did.

Cross-int. 55. Were there two such outlets, or only one?

Ans. I think there were two. They both came pretty close together on the outside.

Cross-int. 56. And these were the only outlets from the two horizontal bottom pipes?

Ans. Yes, sir.

Cross-int. 57. Were these outlets in the shape of tubes or pipes?

Ans. They were in the shape of pipes.

Cross-int. 58. Did they project downward, or out horizontally, or how, from the bottom pipes?

Ans. They projected out.

Cross-int. 59. Did these outlet-tubes lead in a downward direction from the bottom tubes, or in a horizontal direction from the bottom tubes?

Ans. In a downward direction.

Cross-int. 60. Did these outlet-tubes start from the level of the bottom of the bottom tubes?

Ans. They started from the level of the bottom tubes outward, and run down.

Cross-int. 61. Was the point that they started from as low as the bottom of the horizontal tubes?

Ans. They were.

Cross-int. 62. Were they provided with cocks?

555 Ans. We used to stop them up once in a while with corks.

Cross-int. 63. What was the diameter of these outlet tubes at their nozzles?

Ans. One was larger than the other. I don't know exactly the diameter of them; I should think one was an inch and the other was two inches and a half.

Cross-int. 64. How were the bottom tubes cleaned out?

Ans. I don't know, sir. I never saw them cleaned out.

Cross-int. 65. Do you know of any opening which there was at that time in the bottom tubes by which they could be cleaned out?

Ans. Not that I know of.

Cross-int. 66. If I understand you, one of the outlet-tubes you have described led out from the end of one of the horizontal tubes, and the other outlet-tube led out from the end of the other horizontal tube; is that so?

(Objected to as assuming a state of facts which the witness has not said; that is, that there was but one outlet-tube leading from each of the horizontal tubes.)

Ans. Yes.

Cross-int. 67. There was, then, but one outlet-tube from each horizontal pipe, if I understand you; is that so?

Ans. I believe it is.

Cross-int. 68. When this apparatus was put up, which you say was in 1859, was there any other freezing-apparatus or preserving-apparatus on the premises?

Ans. Not that I know of.

Cross-int. 69. What was there, that you remember, in the shape of apparatus of any kind in or about Mr. Racey's premises in 1859 except the apparatus which was then erected there?

Ans. There was a large ice-box.

Cross-int. 70. Will you describe that large ice-box?

Ans. It was a plain large box, with two lids to it—one raised up on the top, one let down in front.

Cross-int. 71. Did you ever see the inside of that box?

Ans. Yes.

Cross-int. 72. Can you describe the inside of it?

556 Ans. It was a plain box inside, had racks on the bottom, zinced inside, and there were boards went up in the center of it half-way across.

Cross-int. 73. Were the fish placed on these boards?

Ans. Yes, sir; we used to lay fish on these boards.

Cross-int. 74. Were there any tubes in this ice-box?

Ans. No more than a hole to let the ice-water run out at the bottom of the ice-box.

Cross-int. 75. How large was this ice-box?

Ans. I should judge it was about six feet long, about three and a half feet wide, and about five feet deep.

Cross-int. 76. How did it stand with regard to the other apparatus which you say was put up in 1859; was it in the same room or cellar?

Ans. It was in the market.

Cross-int. 77. When did you go into the employment of Mr. Racey?

Ans. I think it was in 1857.

Cross-int. 78. What were your duties?

Ans. Different work around the stand.

Cross-int. 79. Describe the premises which Mr. Joseph H. Racey, jr., used in his business while you were with him—I mean besides his stall in the market.

Ans. He had a cellar; that is all that I knew of.

Cross-int. 80. What, as near as you can state, was the size of the cellar?

Ans. I should judge it was about twenty feet long by fifteen feet wide.

Cross-int. 81. And when the apparatus was put up, which you say was in 1859, it occupied pretty much the whole of the space in the cellar? I mean it and the foundation which was dug for it?

Ans. Well, yes, sir.

Cross-int. 82. Before that cellar was dug out by Mr. Raynor for the accommodation of the apparatus which you say was put up in 1859, what was there, if anything, in that cellar?

Ans. The butchers used it for storing various articles.

557 Cross-int. 83. When did Mr. Racey take possession of the cellar for his own purposes? Did he ever do so that you know of until he put up the freezing-apparatus, which you say was in 1859?

Ans. I don't remember when he took full charge of the cellar.

Cross-int. 84. When did you leave Mr. Racey's employment?

Ans. About 1867.

Cross-int. 85 What freezing-apparatus did he have when you left him?

Ans. He had the same one in the cellar which I saw built.

Cross-int. 86. No other?

Ans. He had an ice-box there.

Cross-int. 87. What do you mean by an ice-box?

Ans. A plain ice-box.

Cross-int. 88. Do you mean such a one as you said he had up in the market previous to 1859?

Ans. Something similar to it.

Cross-int. 89. Was it a common refrigerator ice-box, with shelves to hold the articles, and a hole in the bottom to drain off the water?

Ans. Yes.

Cross-int. 90. You went away to the war in 1861 and returned in 1863, I believe. What time in 1863 did you come back and go into Mr. Racey's employment?

Ans. I should judge it was about October, 1863, that I went to work for him.

Cross-int. 91. And when you came back and went to work for him the apparatus which you have described, with horizontal pans, six perpendicular tubes, and two horizontal tubes, was standing there in the cellar?

Ans. Yes, sir.

Cross-int. 92. What did Mr. Racey keep in this apparatus after you came back from the war?

Ans. He kept fish of all kinds, and once in a while he had some game in it.

Adjourned to 10 a. m. 21st July, 1868.

558 TUESDAY, *July 21st*, 1868—10 a. m.

Present, counsel for the respective parties.

The cross-examination of the witness, Michael Connery, was proceeded with.

Cross-int. 93. Have you examined a model, which is in evidence in this case, marked Exhibit No. 2?

Ans. No, sir.

Cross-int. 94. Have you had it described to you?

Ans. No, sir.

Cross-int. 95. Have you looked at the inside of this model, Exhibit No. 2, at all?

Ans. No more than I see it at the present time.

Cross-int. 96. Have you talked with anybody (not the counsel for the defendants) about your testimony, or the matters to which it relates, since you left the stand yesterday afternoon?

Ans. No, sir.

Cross-int. 97. State as exactly as you can when you went into the employment of Mr. Racey.

Ans. When I first went into Mr. Racey's employment I think it was about 1857.

Cross-int. 98. Can you not give that time more definitely than that you think it was about 1857?

Ans. No, sir.

Cross-int. 99. Are you not positive whether it was 1856 or 1857?

Ans. No, sir, I am not.

Cross-int. 100. Are you not positive whether it was 1857 or 1858?

Ans. No, sir.

Cross-int. 101. Did you ever before you went away to the war put any ice and salt, or other freezing-mixture, into more than one freezing-apparatus?

Ans. No, sir.

559 Cross-int. 102. And that freezing-apparatus was in the cellar under Mr. Racey's place in Centre Market?

Ans. It was in a cellar about one hundred feet from Mr. Racey's place—the same cellar I have spoken of.

Cross-int. 103. Did you have occasion to go down into that cellar often between the time you went into Mr. Racey's employment and the time you went to the war?

Ans. Yes.

Cross-int. 104. Pretty much every day?

Ans. Yes.

Cross-int. 105. Did you have occasion very often to go into the same cellar between the time when you returned from the war and the time you left Mr. Racey's employment?

Ans. Yes.

Cross-int. 106. Now, during that time, was there not in that cellar, besides the freezing-apparatus which you have spoken of as being then there, a tank to keep eels in?

Ans. There was an eel-tank.

Cross-int. 107. Did this eel-tank stand against the rear wall of the cellar behind the freezing-apparatus?

Ans. About a foot and a half from the rear wall, and behind the freezer.

Cross-int. 108. What was the space between the eel-tank and the freezer?

Ans. About three feet.

Cross-int. 109. Was there a stairway leading up between the freezer and the tank?

Ans. There was.

Cross-int. 110. Leading up to about the top of the freezing-apparatus?

Ans. It led up about half way, high enough to stand on and charge the pans.

Cross-int. 111. Do you recollect what this stairway rested upon, or was supported by at the sides?

Ans. I never examined it as close as that.

560 Cross-int. 112. Was the eel-tank there when you went to the war?

Ans. Not to my knowledge.

Cross-int. 113. When were you last in that cellar?

Ans. I was in the cellar yesterday.

Cross-int. 114. Was the freezer and the tank and the stairs between them all there yesterday, as you found them when you came home from the war?

Ans. Yes.

Cross-int. 115. Was there a platform at the head of those steps?

Ans. Yes.

Cross-int. 116. How wide was it?

Ans. About three feet.

Cross-int. 117. Occupying the whole width between the freezer and the tank?

Ans. Yes.

Cross-int. 118. Did you see yesterday in the cellar another freezing-apparatus besides the one next to the tank?

Ans. Yes.

Cross-int. 119. Did you see that one before yesterday?

Ans. Yes, sir.

Cross-int. 120. When was the first time you saw the second one?

Ans. I should judge it was about a year ago.

Cross-int. 121. Will you state as exactly as you can the year, and the season of the year, when you last left Mr. Racey's employment?

Ans. It was two years ago this summer—on reflection I find I was not right in saying yesterday it was in 1867.

Cross-int. 122. Was there any difference in construction between the second freezer which you saw yesterday and the first one standing next the tank? Did you examine it so as to know how it was constructed?

Ans. I did not examine it, and do not know its construction.

Cross-int. 123. What time yesterday did you go down into that cellar?

561 Ans. Yesterday morning, before I was examined as a witness.

Cross-int. 124. Was anybody there with you? If so, who?

Ans. Yes, Mr. Rabbitt, a butter-dealer in Centre Market; no one else.

Cross-int. 125. In the freezing-apparatus which was in Mr. Racey's cellar before you went to the war, did he ever preserve lobsters?

Ans. He preserved cooked lobsters there.

Cross-int. 126. Did he preserve mackerel in it?

Ans. Yes, sir.

Cross-int. 127. Do you recollect, at any time before you went to the war, Mr. Racey's freezing a salmon which was shipped to General Sickles, at Washington?

Ans. I have no recollection of that.

Cross-int. 128. Do you remember the names of any of the parties who bought any of the mackerel that was frozen in this freezing-apparatus, before you went to the war?

Ans. I can't rightly bring them into my mind now.

Cross-int. 129. Were any of them sold to W. N. Rogers & Co., of Fulton Market?

Ans. I don't know.

Cross-int. 130. Were any sold to Moon, Lamphier & Co., of Fulton Market?

Ans. I think there were.

Cross-int. 131. Did you preserve any cooked lobsters or freeze them in the freezing-apparatus after you returned from the war?

Ans. I think I did.

Cross-int. 132. Whose business was it before you went to the war to crush the ice and mix it with the salt?

Ans. There were two of us—myself and John Ward.

Cross-int. 133. Do you know where John Ward now is?

Ans. I think he is in Centre Market with Mr. Racey.

Cross-int. 134. How was the crushing of the ice and the mixing of the salt done?

Ans. The ice was ground with a machine, and the salt was put in on top of the ice when the ice was in the apparatus.

562 Cross-int. 135. Was there an ice-grinder there all the time that you were there, both before and after the time when you went to the war?

Ans. Always while I was there.

Cross-int. 136. Is it a common thing with the market-men to keep ice-grinders to prepare the ice for use in their refrigerators, or otherwise?

Ans. Mr. Racey is the only man in the market who has one.

Cross-int. 137. Will you give the names, and the places where they can be found, of the persons who were employed by Mr. Racey in Centre Market when you left for the war, and of those whom you found there on your return, so far as you can?

Ans. When I left for the war John Supples, who is now dead, and William Doremus, also dead, were the only persons there. When I returned, John Ward and Joseph Stormes were there. I don't know where Stormes is.

Cross-int. 138. Was there any other use for the mixture of ice and salt in Mr. Racey's place except to put into the freezing-apparatus which you have described?

Ans. Not that I know of.

Cross-int. 139. What did he put into his refrigerator or ice-box which was up in the market?

Ans. Plain lump ice.

Cross-int. 140. Did you and John Ward work together, or by turns, at grinding ice and mixing it with the salt?

Ans. We worked together.

Cross-int. 141. Who did this work before you went to the war?

Ans. John Supples.

Cross-int. 142. Did you help him?

Ans. Once in a while.

Cross-int. 143. Where did Supples do this work?

Ans. In the cellar.

Cross-int. 144. And the only use, if I understand you, that was made in Mr. Racey's place, of ground ice and salt mixed, before you went to the war, was to put it into the freezing-apparatus?

Ans. Yes.

563 Cross-int. 145. And there was only one freezing-apparatus in Mr. Racey's place before you went to the war?

Ans. That's all.

Cross-int. 146. Was John Ward employed in Mr. Racey's place at any time before you went to the war? I mean, of course, while you were employed there.

Ans. He was employed there to run small errands. I think this was before the war. I hardly think he was there when I left for the war.

his
MICHAEL + CONNERY.
mark.

Deposition of Charles Haggerty, taken, subscribed, and sworn to before R. E. Stillwell, examiner.

WEDNESDAY, *July* 22, 1868.

CHARLES HAGGERTY, being duly sworn as a witness for the defendants, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Charles Haggerty; thirty-three years of age; reside at 100 Grand street, New York City, and am in the soda-water business.

Int. 2. Did you know Joseph H. Racey, jr., in 1859 and 1860?

Ans. Yes.

Int. 3. What was his business at that time, and where did he carry it on?

Ans. Fish-business, in Centre Market.

Int. 4. In 1859 did you have any conversation with him about freezing fish, and about his building an apparatus for that purpose?

(Objected to.)

Ans. Yes, sir.

Int. 5. Did he speak of any particular kind of fish?

(Objected to.)

Ans. Yes; Spanish mackerel.

564 Int. 6. Did he say anything to you about his having any plan for the building the freezer?

(Objected to, but not for form.)

Ans. He told me he had an idea of building a freezer that he could keep fish for a year, or as long as he had a mind to, and one particular kind of fish that he could buy for ten cents a pound at one time of the year and sell at a dollar per pound at another.

Int. 7. Did he give any description of the apparatus which he proposed to build?

(Objected to.)

Ans. Yes, sir.

Int. 8. Did you, after that, visit his place in Centre Market, and there see an apparatus for freezing?

Ans. Yes; I saw the apparatus at the time it was building.

Int. 9. Do you know who did the carpenter-work on it?

Ans. I don't remember his name; but he was a carpenter in Spring street, between Marion and Mulberry streets.

Int. 10. Did you observe how the outside walls of the apparatus were made—with reference to their thickness, I mean?

Ans. They were six inches or more, I think; ten or twelve inches thick.

Int. 11. Did you see it after it was completed?

Ans. Yes, sir.

Int. 12. Who was with you when you went to see it?

Ans. Councilman James Burns, at one time.

Int. 13. When was this?

Cross-int. 129. Were any of them sold to W. N. Rogers & Co., of Fulton Market?

Ans. I don't know.

Cross-int. 130. Were any sold to Moon, Lamphier & Co., of Fulton Market?

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MICHAEL + CONNERY.
mark.

Deposition of Charles Haggerty, taken, subscribed, and sworn to before R. E. Stillwell, examiner.

WEDNESDAY, *July* 22, 1868.

CHARLES HAGGERTY, being duly sworn as a witness for the defendants, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Charles Haggerty; thirty-three years of age; reside at 100 Grand street, New York City, and am in the soda-water business.

Int. 2. Did you know Joseph H. Racey, jr., in 1859 and 1860?

Ans. Yes.

Int. 3. What was his business at that time, and where did he carry it on?

Ans. Fish-business, in Centre Market.

Int. 4. In 1859 did you have any conversation with him about freezing fish, and about his building an apparatus for that purpose?

(Objected to.)

Ans. Yes, sir.

Int. 5. Did he speak of any particular kind of fish?

(Objected to.)

Ans. Yes; Spanish mackerel.

564 Int. 6. Did he say anything to you about his having any plan for the building the freezer?

(Objected to, but not for form.)

Ans. He told me he had an idea of building a freezer that he could keep fish for a year, or as long as he had a mind to, and one particular kind of fish that he could buy for ten cents a pound at one time of the year and sell at a dollar per pound at another.

Int. 7. Did he give any description of the apparatus which he proposed to build?

(Objected to.)

Ans. Yes, sir.

Int. 8. Did you, after that, visit his place in Centre Market, and there see an apparatus for freezing?

Ans. Yes; I saw the apparatus at the time it was building.

Int. 9. Do you know who did the carpenter-work on it?

Ans. I don't remember his name; but he was a carpenter in Spring street, between Marion and Mulberry streets.

Int. 10. Did you observe how the outside walls of the apparatus were made—with reference to their thickness, I mean?

Ans. They were six inches or more, I think; ten or twelve inches thick.

Int. 11. Did you see it after it was completed?

Ans. Yes, sir.

Int. 12. Who was with you when you went to see it?

Ans. Councilman James Burns, at one time.

Int. 13. When was this?

Ans. In 1860. Mr. James Burns was only councilman one year, and that was 1860.

Int. 14. Did you go inside the apparatus?

Ans. Yes, sir.

Int. 15. Was Mr. Racey with you?

Ans. Yes, sir.

Int. 16. Please describe the internal appearance of the apparatus as it was when you visited it with Councilman Burns.

Ans. There were six pipes upright, and two horizontal pipes;
565 three upright, and one horizontal pipe on each side; there were hooks on the ceiling, which Mr. Racey said were for hanging fish.

Int. 17. Into what did these upright tubes enter at the top?

Ans. Into two pans, one on each side; three pipes into each pan.

Int. 18. Did you ever see the apparatus charged with ice and salt?

Ans. Yes. I have helped to charge it.

Int. 19. How was the ice and salt put into the pans?

Ans. On the top, from the outside of the box.

Int. 20. Did you observe any openings in the pans or pipes into the preserving-chamber?

Ans. No, sir.

Int. 21. Was there, or not, so far as you observed, any contact between the air in the preserving-chamber and the ice and salt in the pans and pipes?

Ans. No, sir.

Int. 22. Did you ever notice the appearance of the pipes when charged with salt and ice, as seen from the chamber?

Ans. Yes; they looked all frost, or similar to what you may say snow.

Int. 23. Did you ever see frozen fish in the chamber?

Ans. Yes, sir; and had them in my hands.

Int. 24. Have you seen fish put in unfrozen and taken out afterwards frozen?

Ans. Yes.

Int. 25. Was your attention called to any drainage to the horizontal tubes?

Ans. Yes, sir.

Int. 26. Where located, with reference to those tubes?

Ans. There were, on the back side of the box, two small pipes to let the water drip out.

Int. 27. Two to each horizontal tube, or one?

Ans. One to each horizontal.

Int. 28. Did you observe any other opening in the rear into those tubes at the bottom?

566 Ans. No, sir.

Int. 29. How was the preserving-chamber entered?

Ans. By a door in front.

Cross-examined by counsel for plaintiff:

Cross-int. 30. Have you ever been employed by Mr. Racey?

Ans. No, sir.

Cross-int. 31. You speak of having helped to charge the pans in the apparatus you have described; was that at the time when you went there to see it with Councilman Burns, or was it afterwards?

Ans. Afterwards.

Cross-int. 32. How long afterwards?

Ans. I can't exactly say; but it was within a month. I was in and out there often at that time.

Cross-int. 33. Did you help to charge the pans from mere curiosity, or for what other reason?

Ans. Curiosity, merely. I was standing by doing nothing, and helped the man by grinding the ice, and handing the ice and salt up to him.

Cross-int. 34. Who was the man whom you helped?

Ans. Michael Connery.

Cross-int. 35. Have you been in there from that time to this?

Ans. Yes, sir.

Cross-int. 36. How frequently?

Ans. Twenty times or more.

Cross-int. 37. When was the last time you were in there?

Ans. I have been in within the last five months, but not within the last six weeks.

Cross-int. 38. From the time you were in there and helped to charge the pans, do you recollect about how long it was till you went in again?

Ans. Within a day or two; might have been the next day.

Cross-int. 39. Was there a time, after the thing was fully started, when you ceased to go in there frequently and some considerable interval passed before you went again?

567 Ans. There was an interval of about three years, or longer, when I did not go in.

Cross-int. 40. When were those three years, as near as you can recollect?

Ans. After 1863.

Cross-int. 41. In 1859 and 1860 were you out of employment?

Ans. No, sir.

Cross-int. 42. How were you employed?

Ans. In the soda-water business.

Cross-int. 43. Where was your place then?

Ans. 139 and 141 Franklin street, New York City; that is where I receive my soda-water, and receive my orders, and I sell and deliver it (the soda) through the city from my wagon; that is my custom now, and was in 1860.

Cross-int. 44. How happened you to be so frequently in at Racey's place in those years?

Ans. I had a man on the wagon with me who knew the route, and I frequently let him go alone. We would get through early in the afternoon, and I would frequently be in Mr. Racey's company, as we were intimate friends.

Cross-int. 45. You did not go down in the cellar every time you went to see Mr. Racey, did you?

Ans. No, sir.

Cross int. 46. Do you remember going into the cellar more than twice, once when you went with Councilman Burns, and once when you helped to charge the pans?

Ans. Yes.

Cross-int. 47. Do you remember anything you did on any other occasion when you were in there?

Ans. Nothing particular.

Cross-int. 48. Do you remember having examined the freezer on going inside, so that you could examine it, except the time when Councilman Burns was with you?

Ans. Yes; ten times, or more.

Cross-int. 49. Was this in 1859 and 1860, or about that time?

Ans. About 1860 and 1861.

568 Cross-int. 50. Is Councilman Burns living?

Ans. No; he died a few months since.

Cross-int. 51. Are the premises 139 and 141 Franklin street occupied by yourself; if not, by whom?

Ans. Not by myself, but by the firm of Taylor & Wilson.

Cross-int. 52. What is their business?

Ans. Dealers in and manufacturers of soda-water, porter, ales, and

Cross-int. 53. Were you employed by them?

Ans. No.

Cross-int. 54. You received your orders for soda-water at their place, and bought your soda from them?

Ans. Yes.

Cross-int. 55. Did you ever see in the cellar at Racey's a tank to keep eels in?

Ans. Yes.

Cross-int. 56. When did you first see that eel-tank there?

Ans. It is certainly over three years ago, but I cannot state the exact time.

Cross-int. 57. I wish you would state in what year you first saw it there to the best of your recollection.

Ans. I can't answer the question any nearer than I have to make it positive.

Cross-int. 58. You think it was later than 1859 or 1860, do you not?

Ans. Yes, sir.

(Adjourned to 22d July at 10 p. m.)

WEDNESDAY, 22*d July*—10 a. m.

Present, counsel for respective parties.

The cross-examination of the witness Charles Haggerty was continued:

Cross-int. 59. How long ago did you become intimate with Mr. Racey, so as to stop at his place of afternoons in the manner you have described?

569 Ans. The place we usually met was at Centre Hall, corner of Grand street and Centre Market Place. The intimacy began nine years ago, positively.

Cross-int. 60. When did you first know him?

Ans. Fourteen or more years ago.

Cross-int. 61. Were you ever in his place in Centre Market more than nine years ago?

Ans. Yes, sir.

Cross-int. 62. Frequently?

Ans. No; I used to stop in there once a week, or once in two weeks.

Cross-int. 63. Were you ever in the cellar of Mr. Racey in Centre Market, cellar No. 11, before the time when you went with Councilman Burns to see the freezing-apparatus?

Ans. Yes, sir; I was in the cellar occupied by Mr. Racey.

Cross-int. 64. How frequently do you think you were in that cellar during the years 1856, 1857, 1858?

Ans. Three times or more.

Cross-int. 65. State, as nearly as you can, how many times you were in that cellar before the time when you were there with Councilman Burns and saw the freezing-apparatus which you have described.

Ans. I was in there five or six times. I was in there while it was being built.

Cross-int. 66. What did you ever see in that cellar before you saw the freezing-apparatus there, which you have described?

Ans. Brooms, baskets, ice-box, boxes, and such things as that.

Cross-int. 67. It was a place for stowing or keeping various kinds of articles, was it not?

Ans. Yes; such as butchers or fishermen would use.

Cross-int. 68. What do you mean by an ice-box? A refrigerator?

Ans. A box to keep ice in; I have seen fish put in it.

Cross-int. 69. Do you mean that it was a box in which ice was placed to keep to be taken out as wanted?

Ans. No.

570 Cross-int. 70. Then state what you do mean, and describe the box fully.

Ans. The box I should say was six or eight feet long, from three to four feet wide, five feet or over high, with the ice broke up small, and to preserve the fish there were layers of ice and layers of fish, and then ice put on top of it again.

Cross-int. 71. Do you mean that you ever saw layers of fish and layers of ice together in the manner you have described in that ice-box?

Ans. I have seen them put in in the manner described.

Cross-int. 72. This was before you were there with Councilman Burns?

Ans. Yes, sir.

Cross-int. 73. Did you see this ice-box used in this way repeatedly before that time?

Ans. I have seen it twice or more.

Cross-int. 74. What else was there about that ice-box which you can describe? I speak of its internal construction. Had it any doors, or any racks, or any drain-hole at the bottom, or anything else?

Ans. It had a door raised up from the top. All I saw was the outside; I did not examine the box, I only saw the ice and fish put in.

Cross-int. 75. Did you see them raise up that door and put in the fish and ice and shut the place up again?

Ans. Yes.

Cross-int. 76. This door was a lid, if I understand you, which was lifted up from the top of the box?

Ans. Yes.

Cross-int. 77. With the exception of this ice-box which you have thus described, did you ever see any apparatus of any kind on Mr. Racey's premises in Centre Market, or in the cellar there, until you saw the freezing-apparatus, which you say Councilman Burns saw with you in 1860?

Ans. Well, I've seen an ice-box behind his stand, up in the mar-

571 ket—a custom ice-box, as I suppose, to put fish in, bought by customers, to preserve until sent home. That is the only other one that I remember or know of.

Cross-int. 78. Now, coming to the apparatus which you and Councilman Burns looked at together in 1860, will you state what use you saw made of that apparatus the first time you saw it used?

Ans. I saw it charged with small ice, ground up; salt put into it. That is the first time I saw it.

Cross-int. 79. Did you see it charged in this way more than once afterwards?

Ans. Yes, several times.

Cross-int. 80. Did you ever see it charged any other way?

Ans. No.

Cross-int. 81. This ice and salt was tumbled into the pan at the top of the apparatus?

Ans. Yes.

Cross-int. 82. What else did you see done with that apparatus besides the putting the ice and salt into the pan at the top? I speak now of the time you first saw it used or tried.

Ans. Nothing, the first time.

Cross-int. 83. Well, what did you see done with it the next time besides charging with ice and salt?

Ans. The next time I saw it I did not see anything done, but I saw some frozen fish in it.

Cross-int. 84. How long was that, do you think, after the first time?

Ans. One or two days.

Cross-int. 85. Do you mean that you saw frozen fish lying in it, or that you saw fish taken out of it in a frozen state?

Ans. I saw frozen fish lying in it, saw them taken out, and handled them.

Cross-int. 86. Was the visit of Councilman Burns and yourself to that apparatus made soon after it was complete and ready for use?

Ans. Yes.

Cross-int. 87. Had the apparatus, or not, been in use that you know before Mr. Burns and you went there on that occasion?

572 Ans. Yes, some time before.

Cross-int. 88. Had you seen it in use before?

Ans. Yes.

Cross-int. 89. How long before the visit of yourself and Mr. Burns had you seen it in use?

Ans. Some months before. I cannot tell the exact time.

Cross-int. 90. Did you see any difference in the arrangement of the inside between the first time you saw it in operation and the time you saw it with Mr. Burns?

Ans. No.

Cross-int. 91. State, as nearly as you can, how many months there were between these two times.

Ans. I can't positively say how long it was, but it was some time. I know it was in 1860 I saw it with Mr. Burns, because he was elected councilman in that year.

Cross-int. 92. When you saw it in use the first time, had it, so far as you know, been just put in use?

Ans. Yes.

Cross-int. 93. How were the fish placed in the apparatus when you saw it the first time when it had just been put in use?

Ans. I did not take particular notice.

Cross-int. 94. Did you notice whether there was anything in the chamber except fish?

Ans. I did not.

Cross-int. 95. Did you the second time?

Ans. I am not positive the second time. I have seen other things in it besides fish.

Cross-int. 96. When you saw it the first time with fish in it, how were the fish placed in it?

Ans. I did not take particular notice.

Cross-int. 97. Did you notice whether the fish were hanging up or lying down, or on what they were lying, or anything about it?

Ans. To the best that I remember, the fish were lying down that I saw.

Cross-int. 98. Lying down on ice or with ice?

Ans. No ice.

573 Cross-int. 99. Did you not notice what they were lying on?

Ans. On the floor.

Cross-int. 100. Were they lying on the floor the second time you saw it in use?

Ans. Yes.

Cross-int. 101. Did you ever see the fish lying in any other way in the apparatus than on the floor?

Ans. Yes; I have seen them hanging up, and packed in, lying on top of one another.

Cross-int. 102. This was after you and Councilman Burns was there together, was it?

Ans. Before and after, both.

Cross-int. 103. Do you recollect at what time of the year in 1860 you met Councilman Burns there?

Ans. I don't exactly recollect the time, but it was some time after he took his seat.

Cross-int. 104. When was that?

Ans. In January, 1860.

Cross-int. 105. Do you know at what season of the year it was you and he were there?

Ans. To the best of my recollection, it was winter.

Cross-int. 106. Will you give the names of the persons who were employed at Mr. Racey's place in Centre Market at the time you and Mr. Burns were there together?

Ans. To the best of my recollection, Michael Connery, and others whose names I don't know.

CHARLES HAGGERTY.

574 *Deposition of James L. Babbitt, taken, subscribed, and sworn to before R. E. Stilwell, Examiner.*

WEDNESDAY, *July 22d*, 1868.

JAMES L. BABBITT, being duly sworn as a witness for the defendants, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. James L. Babbitt; age, 53 years; reside at 105 McDougal street, New York City; butter and cheese dealer in Centre Market.

Int. 2. How long have you been engaged in that butter and cheese business in Centre Market?

Ans. About twenty-five years.

Int. 3. Do you know Mr. Joseph H. Racey?

Ans. Yes.

Int. 4. How long have you known him?

Ans. I have known him for twenty years—from his boyhood, almost.

Int. 5. Did you know of his building a freezer in a cellar under the market?

Ans. Yes.

Int. 6. Will you state as nearly as you can when it was?

Ans. As near as I can remember, it was in 1858 or 1859.

Int. 7. Did you see it while it was being built?

Ans. Yes.

Int. 8. Do you remember by whom the wood-work was built?

Ans. I knew the man by sight, but had no particular acquaintance with him; did not know his name.

Int. 9. Will you please describe, as nearly as you can, the internal appearance of the apparatus, as it was when you first saw it?

Ans. There were three tubes on each side, reaching from ceiling to floor, and connected with the receiver on the top. There were two tubes at the bottom, into which the up and down tubes entered.

Int. 10. Of what were these receivers and tubes made?

575 Ans. Of galvanized iron.

Int. 11. Did you observe any opening from the pans or tubes into the preserving-chamber?

Ans. No.

Int. 12. Whether or not the air in the preserving-chamber came at all in contact with the contents of the pans or tubes?

Ans. No.

Int. 13. Did you observe how the pans were filled, and with what they were filled?

Ans. They were filled, from the outside on the top, with ground ice and salt.

Int. 14. Where, with reference to your stand, was this apparatus?

Ans. It was under the next stand to mine.

Int. 15. Have you frequently seen them filling the apparatus?

Ans. Yes.

Int. 16. Have you observed the appearance of the tubes from the inside after the apparatus was thus filled?

Ans. Yes.

Int. 17. How did they appear?

Ans. They appeared te be frosted—heavily frosted.

Int. 18. Since the apparatus was first built have you seen it frequently?

Ans. Yes.

Int. 19. Did you observe any change in the internal construction of it?

Ans. No.

Int. 20. Did you ever know anything to be frozen in the preserving-chamber of that apparatus?

Ans. Yes.

Int. 21. State what you have seen thus frozen.

Ans. Fish, birds, and venison.

Int. 22. Did you ever know of fish being put in there unfrozen and afterwards taken out frozen?

(Objected to as leading.)

Ans. I cannot swear positively that the very identical fish I saw
576 put in unfrozen were taken out frozen, but I have seen unfrozen fish and birds put in and frozen fish and birds taken out.

Int. 23. Since the apparatus was completed how frequently have you seen it?

Ans. Very often—weekly, as you may say. It is a common occurrence for me to see it.

Cross-examined by counsel for plaintiff:

Cross-int. 24. Did you ever see any apparatus of the same kind before you saw the one which you have described?

Ans. No.

Cross-int. 25. Have you a stand in Centre Market?

Ans. Yes.

Cross-int. 26. Have you had the same one for the last ten years?

Ans. For twenty-five years.

Cross-int. 27. Will you state any fact which enables you to say with certainty that it was not as late as 1861 that you first saw this apparatus in Mr. Racey's cellar?

Ans. Yes, sir; it was a year or so before the war.

Cross-int. 28. Will you state any fact which enables you to say that it was before the war?

Ans. My memory serves me, and I am positive that it was before the war.

Cross-int. 29. Can you explain how it is that you are positive of that? Is there any connection between your seeing that apparatus and the breaking out of the war, or is it merely matter of recollection with you that you saw it for the first time before the war broke out and not afterwards?

Ans. I am satisfied that it was before the war broke out.

Cross-int. 30. But, as to that fact, do you rely upon your memory alone?

Ans. To the best of my knowledge and belief it was before the war broke out. (Question repeated.) I know it from the circum-
577 stance of the war and from the fact of its being built before the war began.

Cross-int. 31. As to the fact of its being built before the war began, do you rely upon your memory alone, or do you rely upon some circumstance which shows you that it was before the war began?

Ans. The Metropolitan Regiment was getting up then, and they had their quarters over the market, and the freezer was in operation then.

Cross-int. 32. But how does the fact that that regiment had their headquarters over the market at any particular time help you to remember and say with any certainty that this freezing-apparatus was in operation in a cellar under that market at the same time?

Ans. Because I was out there most every day to see the military work going on.

Cross-int. 33. Did, or did not, other regiments have their headquarters over that market afterwards during the war?

Ans. Yes.

JAMES L. BABBITT.

Deposition of John W. Danford, taken, subscribed, and sworn to before R. E. Stilwell, examiner.

FRIDAY, *July 24th*, 1868.

JOHN W. DANFORD, being duly sworn as a witness for the defendants, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. John W. Danford; fifty years of age; reside at Williamsburgh, New York State; carpenter.

Int. 2. State your place of business, and the name of your firm, if any.

578 My place of business is 59 Spring street, New York City; Danford & Gray is the name of my business firm.

Int. 3. How long have you been in business at that place, and with Mr. Gray?

Ans. Have been in business there since 1855, and with Mr. Gray since the first of March, 1855.

Int. 4. Has your firm done work for Mr. Joseph H. Racey, jr.?

Ans. Yes.

Int. 5. Do you remember, in 1855 or 1856, building for Mr. Racey an ice-box which was placed in the Centre Market?

Ans. We made one for him about that time.

Int. 6. Have you any recollection of the size and shape of that box?

Ans. It was a high box, not very deep from front to back; it might have been four feet, and I should say about six feet high at the least. I don't know but it was higher than it was long.

Int. 7. How was it entered? What doors or openings had it?

Ans. It strikes me that there was one door which opened from the top, and another door, I am pretty sure, opened from the end of it to go right into it.

Int. 8. Do you know where the ice-box was placed in the market, and what its situation was in Mr. Racey's stand?

Ans. It was about two numbers from the upper end of the market, on the west side. It was next to the street, against the wall.

Int. 9. Did you, at any time after you built that box, build a freezer in the cellar at Centre Market for Mr. Racey?

Ans. I did.

Int. 10. As nearly as you can remember, state when you built that freezer.

Ans. To the best of my recollection and all that I can bring to bear upon it it was either the very last of 1859 or the first of 1860. I think it was in the fall of 1859.

Int. 11. Can you give the size of that freezer and some description of the manner in which its walls were built?

Ans. I can give an exact description of the way in which it was built. It was built of two-inch thick and ten-inch wide plank, for
579 beams in every part, ceiled outside and in with worked boards in every part, filled in with sawdust in the space where this ten-inch plank was; there were two spaces left, one at each end—I mean on top, but close to the ends. One small door in front. It is about seven and one-half or eight feet square, and about six and one-half feet high.

Int. 12. The two spaces referred to in the last answer were, if I understand you, left in the top; will you please to state how large they were, and whether or not they opened to the outer air?

Ans. I should think they were about sixteen inches wide by five feet long. They opened to the outer air.

Int. 13. After you had built the box was anything put into those spaces; if so, what?

Ans. In this space there was a pan sunk down in and fastened tight; from that pan there were three cylinders came down into a barrel; there is an outlet from that barrel into the sewer to let out the waste water.

Int. 14. Was there a pan placed in each of these openings which you have described as being in the top of the box at either end?

Ans. Yes.

Int. 15. Of what were those pans made?

Ans. I should think of galvanized iron.

Int. 16. How were they fastened?

Ans. Nailed to the beams.

Int. 17. You say the cylinders that passed down from these pans went into a barrel; where did that barrel lay, and what was it made of?

Ans. The bottom of the barrel was, I should think, about ten inches from the bottom of the freezing-house; it is made, I supposed, of galvanized iron.

Int. 18. Was there more than one of them?

Ans. One on each side of the box.

Int. 19. Of what were the cylinders made that passed down through the chamber into these barrels?

Ans. The same as the rest—galvanized iron.

580 Int. 20. Did you observe how the pans and cylinders were fastened together?

Ans. I never looked; they were soldered, I suppose.

Int. 21. Which way did the barrels at the bottom run; that is, how did they lay in the chamber?

Ans. The water pitched to the rear; the barrels ran from front to rear.

Int. 22. Did you observe whether either end of these barrels was higher than the other?

Ans. The front ends of course were higher, to pitch the water to the rear.

Int. 23. Were there any openings at the ends of those barrels; if yea, at which end?

Ans. There were openings at the rear.

Int. 24. Did you make any coverings for the pans at the top of the box?

Ans. We did.

Int. 25. How did they fit on to the pans?

Ans. It was made double thickness and dropped right in.

Int. 26. Was it a tight-fitting cover?

Ans. As tight as we could make it.

Int. 27. When the covers were on the pans was there any way by which the air in the chamber could come in contact with anything in the pans?

(Objected to as leading. Question withdrawn.)

Int. 28. Were there any openings in the two pans at the top, or in the cylinders leading from them, or in the barrels into which they went, except as stated by you heretofore?

Ans. Not to my knowledge.

Int. 29. As you entered the chamber by the door, how were these pans and cylinders placed?

Ans. One on the right and one on the left.

Int. 30. Were there openings through the wall of the box at the rear; if yea, where were they and for what purpose?

Ans. Two small pipes ran through the wall about three and one-half feet from the bottom of the inside of the apparatus.

581 Int. 31. Do you know whether there was any connection between those pipes thus passing through the walls of the box and the barrels into which the cylinders went?

Ans. I do not [and I think not.]

(Counsel for plaintiff objects to the four words in last answer in brackets as not responsive.)

Int. 32. What was the thickness of the door, and whether or not was it filled in with sawdust as stated with reference to the walls?

Ans. It was of the same thickness as the walls and filled in the same way.

Int. 33. Did you ever see anything put into those pans and cylinders; if so, what?

Ans. I saw ground ice.

Int. 34. Anything else?

Ans. No; I never see anything more than that.

Int. 35. Did you ever see them mixing salt with the ice before it was put into the pans and cylinders?

(Objected to for form and substance.)

Ans. I never did. It may be that I have seen it done, but I would not like to swear to it.

Int. 36. Did you screw in or put in any hooks or racks into the chamber after the pans and cylinders were put in; if so, which?

Ans. Yes. I put dozens of hooks on the sides and top. I put no racks at that time.

Int. 37. When were these hooks put in?

Ans. Soon after it was finished and charged with ice.

Int. 38. Did you ever see the inside of the chamber after the pans and cylinders had been charged with ice?

Ans. I have.

Int. 39. What was the appearance of the cylinders as seen in the chamber?

Ans. They were covered with ice, a coating of ice all over them, solid.

Int. 40. Did you ever see anything frozen in that chamber?

Ans. I have.

Int. 41. What?

582 Ans. Fish, birds, game.

Int. 42. Have you frequently been there and seen the freezer since it was complete?

Ans. I have.

Int. 43. How recently have you been there?

Ans. I don't know as I have seen the inside of it in three months.

Int. 44. When you last saw it, did you observe any difference between the position of the pans, cylinders, and barrels then, and when it was first constructed?

Ans. I did not.

Int. 45. When you saw the ice put into the pans at the top of the freezer, how was it put in?

Ans. It was carried by boys, in a basket, and dumped in.

Int. 46. How much space is there between the top of the apparatus and the floor of the market?

Ans. I should think about eighteen inches between the beams of the floor of the market and the top of the box.

Int. 47. After you built this freezer did you build an eel-tank for Mr. Racey?

Ans. Yes.

Int. 48. When that eel-tank was first placed what was its position in the cellar with reference to the door?

Ans. It was laid on the right-hand side of the door, or south side of the cellar.

Adjourned to Thursday, the 23d July at 10 a. m.

THURSDAY, 23d *July*, 1868—10 a. m.

Present, counsel for respective parties.

The examination of the witness John W. Danford was continued:

(The witness desires to state in explanation of the term "barrel," used by him yesterday, that he meant a tube made of iron.)

Int. 48*a*. After you finished building the freezer, as stated by you heretofore, did you build yourself a house in Williamsburg?

Ans. I did.

583 Int. 49. In what year did you build that house?
Ans. In 1860.

Int. 50. Was there a man named Smith employed by you at the time that you built the freezer for Mr. Racey?

Ans. There was; that is, Smith was his first name; his full name was Smith Riggs.

Int. 50*a*. How was he generally called?

Ans. Smith.

Int. 51. Did he go to the war?

Ans. He did, twice.

Int. 52. Was the first time he went to the war before or after he worked on Racey's freezer?

Ans. It was after.

Int. 53. Was he injured in one of his arms or hands while at the war?

Ans. He was, in the right arm.

Int. 54. Where is he now?

Ans. Dead.

Cross-examined by counsel for the plaintiff:

Cross-int. 55. Did you keep any books in the years 1856 to 1860, showing your work done and moneys received, etc.?

Ans. For all moneys received, I did, and for work done, if charged; if cash is paid for work it is not charged.

Cross-int. 56. Did not you keep any account of your labor?

Ans. We did, unless cash was paid for it.

Cross-int. 57. But even when you were paid cash for a job, did you not keep some account, from day to day, where the work was being done during the time you worked and the lumber you used, etc.?

Ans. We did where we used lumber.

Cross-int. 58. Were the jobs you did for Mr. Racey, namely, the ice-box, freezer, and eel-tank, what you call cash-jobs?

Ans. The ice-box we furnished no lumber for; he paid us merely for our time. I think some of them have been charged.

584 Cross-int. 59. Which?

Ans. Can't say.

Cross-int. 60. Are those books of yours, for the years I have mentioned, now in existence?

Ans. They are.

Cross-int. 61. Will you produce them in evidence?

Ans. I can; I will produce them here for examination only.

Cross-int. 62. You say you furnished no lumber for the job of the ice-box. Who did furnish the lumber?

Ans. Mr. Racey.

Cross-int. 63. How long a job was that?

Ans. I think we were there about four days, making eight days' work for two of us.

Cross-int. 64. Who worked with you on that job?

Ans. Smith Riggs and myself.

Cross-int. 65. Did you do any other work for Mr. Racey that you remember, after 1856, except the ice-box, the freezer, and the eel-tank?

Ans. I did.

Cross-int. 66. Was this other work done after the three jobs I have just mentioned were done?

Ans. Before and after, both.

Cross-int. 67. What other jobs did you do for him between the years 1856 and 1862?

Ans. I built him a stable, fitted up a house, and numerous little hour and half-hour jobs that I can't locate.

Cross-int. 68. Did Mr. Racey pay you for these little jobs as they were done, or did you keep an account, and send him in a bill at stated times?

Ans. Oftentimes Mr. Racey paid me before I left the place; if he did not, I charged it.

Cross-int. 69. Do you know whether your books show the receipt of the money for building the ice-box, or any charge for the time spent on that job?

Ans. I presume there is a charge for the time somewhere, but I do not find any specific charge as an ice-box.

585 Cross-int. 70. Have you examined the books with a view to find that charge?

Ans. I have.

Cross-int. 71. And do you mean that you cannot find on your books any charge for time, or any entry of money received, which you can identify as relating to the job of the ice-box?

Ans. I cannot find any charge as an ice-box, but I can find entries of moneys received.

Cross-int. 72. Do you find an entry of money received to the amount of $16, or thereabouts, from Mr. Racey, which you believe to relate to that ice-box?

Ans. I could not tell. I have not been over the cash-book myself.

Cross int. 73. Did you not, in such cases as this ice-box job, keep some book, from day to day, showing how many hours, or parts of hours, you worked on a job, so that when the job was done you would know how much time you had spent upon it?

Ans. We did, if it was a large job, and I did not work on it myself.

Cross-int. 74. This ice-box job was a small one, as you use that term?

Ans. Yes.

Cross-int. 75. Why did you not keep an account of the time, when you worked on a job yourself?

Ans. Probably I did, on a piece of paper. Don't require much where it is all time and no stuff.

Cross-int. 76. Did you furnish the stuff for the ice-box?

(The witness here states: I supposed that all the previous questions about the "ice-box" really referred to the freezer, and answered accordingly. My answers to those questions will be correct if the word "freezer" be substituted for the words "ice-box" in the questions.)

Ans. I don't remember ever furnishing it.

Cross-int. 77. Did you work yourself on the ice-box?

Ans. I don't think I did.

Cross-int. 78. Do you remember who did work on it?

586 Ans. I think James Cashman.

Cross-int. 79. Where is he?

Ans. Dead.

Cross-int. 80. How long did it take to build that ice-box?

Ans. A day, or, perhaps, two days at the outside.

Cross-int. 81. Did you keep any account of the time spent by Cashman on that job?

Ans. I don't think I did.

Cross-int. 82. You did not, then, keep an account of the time spent on those jobs, where you furnished no lumber, whether you personally worked on the job or not; am I right?

Ans. I did not charge it every night, and, if paid, I did not charge at all.

Cross-int. 83. In order to understand you clearly, I ask you whether or not, in cases where you did not furnish any stuff, you kept any account, from day to day, of the number of hours, or parts of hours, spent either by yourself or by your men on the job, so as to enable you, when you came to charge for the time spent, to state and charge for that time correctly?

Ans. If a large job, yes; if a small job, no.

Cross-int. 84. What do you call a large job, and what do you call a small job?

Ans. I call a small job anything lower than $25; a large job from $50 to $1,000, or upwards.

Cross-int. 85. Neither the freezer job nor the ice-box job was what you call a large job?

Ans. No, sir. Pretty small, I call them.

Cross-int. 86. In the case of the eel-tank, did you furnish any stuff?

Ans. I think not.

Cross-int. 87. Do you know whether you did or not?

Ans. I feel certain we did not.

Cross-int. 88. Was the eel-tank job worth less than $25, and, therefore, what you call a small job?

Ans. I believe the eel-tank cost about two dollars to make it.

Cross-int. 89. So that your books do not give you any assist-
587 ance in determining the time of your work upon either of the three jobs which are in question here, namely, the ice-box, the freezer, and the eel-tank?

Ans. Nothing put down by that name, or as such.

Cross-int. 90. That is not exactly what I asked you. What I want to know is, whether there is any entry in any one of your books which helps you, in any way, to determine the date of either of those three jobs.

Ans. In my books for 1857 or 1858, after the ice-box was built, I have a charge for putting in sash and glass to enclose the stand where the ice-box was; that is the only entry which helps me to fix the date of either of the three jobs.

Cross-int. 91. Did Mr. Racey occupy two stalls in Centre Market at this time, 1857 and 1858, for his business?

Ans. He did.

Cross-int. 92. What did he do in the stall where the ice-box was put?

Ans. I don't know.

Cross-int. 93. What was there inside this sash and glass enclosure you mentioned?

Ans. I have seen barrels of fish and dried fish lying in there.

Cross-int. 94. Did the enclosure take in the stall?

Ans. It took in the whole space the market allowed him. There is no stall, only a stand.

Cross-int. 95. Had Mr. Racey occupied this stand in the market for any purpose before the ice-box was put there?

Ans. Not that I know of.

Cross-int. 96. Do you know whether he had or not?

Ans. I do not.

Cross-int. 97. Will you please to state, as particularly as you can remember, what there was in this enclosure besides the ice box?

Ans. I think I have seen fish in there dry, and in barrels. I am not there only once in every two or three months.

Cross-int. 98. When did you build the stable for Mr. Racey?

Ans. I think it was 1858.

588 Cross-int. 99. Is that as near as you can come from recollection?
Ans. Yes.
Cross-int. 100. When did you fit up the house for him?
Ans. In 1858, as near as I can recollect.
Cross-int. 101. You have done a great deal of work for Mr. Racey first and last, have you not?
Ans. I have.
Cross-int. 102. From 1856 all the way down to the present time?
Ans. I have.
Cross-int. 103. Have you done for him any other work in Centre Market than the three jobs of the ice-box, the freezer, and the eel-tank?
Ans. I have, a great many.
Cross-int. 104. Will you name such of the principal ones as you can call to mind?
Ans. I built him a stand; I rebuilt his cleaning-house; fitted up other stands for him in the same market; built him a larger freezer; an addition to his fish-house; new floors. I refitted one stand for him two or three times, and made a number of ice-boxes.
Cross-int. 105. These jobs were scattered along through the years from 1857 to 1868?
Ans. Yes.
Cross-int. 106. When did you make the number of ice-boxes that you speak of—at different times?
Ans. Yes.
Cross-int. 107. Did you make any of them more than five years ago?
Ans. Yes.
Cross-int. 108. How many ice-boxes should you say you made for him between 1856 and 1863? I mean in addition to the ice-box and freezer mentioned in your direct examination.
Ans. Two or three.
Cross-int. 109. State, as near as you can, the date when these two or three ice-boxes were constructed.
589 (The counsel for the defendants objects that this question was put by counsel other than the counsel who conducted the previous part of the examination.)
Ans. I think I made Mr. Racey a small ice-box in 1858, and it strikes me I made him another in 1860, and another in 1862.
Cross-int. 110. Where were these ice-boxes placed for use?
(Same objection as before, the question being put by Mr. Cutter, the previous question having been put by Mr. Browne.)
Ans. Near the stand, in his cleaning-house, and in his cellar in Centre Market.
Cross-int. 111. Describe each one of these ice-boxes.
(Same objection.)
Ans. I cannot describe every one. I made one about seven and a half feet long, three feet deep, and two feet eight inches wide, as near as I remember. The other was smaller, so far as I can remember. This is all the description I can give.
Cross int. 112. Can you not describe the interior or internal arrangements of those ice-boxes?
(Same objection.)
Ans. They were perfectly plain inside, so far as I was concerned with them.
Cross-int. 113. What do you mean by perfectly plain?
(Objection continued.)

Ans. I mean that they were plain, smooth boxes on the inside when I left them.

Cross-int. 114. Of what material were they made inside and outside?

Ans. Of two-inch white-pine plank.

Cross-int. 115. Was there any metallic lining of any kind in either; if so, of what was it made?

Ans. Not by me. I saw metallic lining in them afterwards, but do not know of what kind.

Cross-int. 116. Who put that metallic lining in?

Ans. I don't know.

Cross-int. 117. Did you see them in use by Mr. Racey, and see their interior then?

590 Ans. I will not swear that I ever saw the whole of them in use since they were made. I have seen some of them with ice in, and fish in the ice.

Cross-int. 118. Did you see any person putting in metallic lining into any one of them?

(Objection continued.)

Ans. Not to my recollection.

Cross-int. 119. What other ice-boxes than what you have stated have you built for or furnished to Mr. Racey? State all such others that you have made or furnished since 1856.

Ans. I made him two this spring, (1868;) those and what I have mentioned before are all that I now recollect.

Cross-int. 120. Now state how many freezers you have made for Mr. Racey, besides those stated, since 1856.

(Objected to.)

Ans. I have made one other.

Cross-int. 121. When was that constructed?

(Objected to specifically.)

Ans. In February or March, 1867.

Cross-int. 122. Describe that freezer fully.

(Objected to specifically.)

Ans. The description of my work on the first one answers for the second one, except that the second one was larger. The last one carries out the same idea as the first one—only it is on a larger scale—that is as close as I can get it; the waste-water comes to the front in this one instead of the rear, as in the other.

Cross-int. 123. Who did the plumbing for this last one?

Ans. I don't know.

Cross-int. 124. Did you see the plumbing done?

Ans. I think I did, part of it.

Cross-int. 125. Where does the man do or did business who did it?

Ans. I don't know.

Cross-int. 126. Of what material were the tubes and pans made in this apparatus?

(Objected to specifically.)

591 Ans. I think it was galvanized iron.

Cross-int. 127. Who furnished this iron to Mr. Racey or to you?

Ans. I don't know; nobody furnished it to me.

Cross-int. 128. Who did the iron-work on that freezer?

Ans. I don't know.

Cross-int. 129. Who fitted in the pans and the tubes to this apparatus?

Ans. I don't know.

Cross-int. 130. Was that work, or any part of it, done when you were present?

Ans. Yes; I bored two holes to put the pipes through.

Cross-int. 131. Can you state any book-entry or any circumstance which enables you to say that the first freezer was put up in the very last of 1859 or the first of 1860?

Ans. My book don't show it. The circumstance is that I bought a lot in Williamsburgh in 1859. I got the title-deed for my property on the fifth day of July, 1859. Mr. Racey gave me a tree from Houston street to put in front of that lot—which tree is there yet; no other circumstance except that Smith Riggs worked for me then. When the war broke out, Smith Riggs went to the war; he got sick and came to my house, and I kept him until he got well, and then he went to work for me; then he enlisted again, and when he came back, we built the second freezer in 1860. I built my house and I feel certain this freezer was built the fall before I moved into my house.

Cross-int. 132. How does the circumstance of the tree given you by Mr. Racey, from Houston street, enable you to fix the date of the building of the first freezer, as being in the last of 1859 or the first of 1860?

Ans. Because I built the freezer soon after I got the tree.

Cross-int. 133. How do you know that, and is it a matter of mere recollection with you?

Ans. The same recollection that the tree is.

Cross-int. 134. When did Smith Riggs die, and where did he reside when he died?

Ans. He died in May, 1867, near Bridgeport, Connecticut.

Cross-int. 135. Do you know any of his relations?

592 Ans. I do; my partner is his cousin.

Cross-int. 136. Where do Riggs' relatives reside?

Ans. Near Bridgeport, Connecticut.

Cross-int. 137. Where did Riggs reside in 1859? Give place, street, and number.

Ans. New York. I can't give any nearer address.

Cross-int. 138. How long before the building of the first freezer was Riggs employed by you?

Ans. About two or three years.

Cross-int. 139. Who did the plumbing on the first freezer built by you for Mr. Racey?

Ans. I don't know.

Cross-int. 140. Was there a plumber employed in building it?

Ans. I suppose there was.

Cross-int. 141. Did you and he work together on this freezer at any time?

Ans. I think I bored some holes through for him; that's all.

Cross-int. 142. Was he the same plumber employed in building the first freezer for Racey?

Ans. I don't know.

Cross-int. 143. Did he furnish the metallic material for the first freezer?

Ans. I don't know.

Cross-int. 144. How long did you work together upon the first freezer? State as near as you can.

Ans. Maybe half an hour—maybe not more than fifteen minutes.

Cross-int. 145. Have you known at any time where his place of business was?

Ans. Never.

Cross-int. 146. Have you seen him since the first freezer was built?

Ans. Not to know him.

Cross-int. 147. Have you known the name of any person other than

those you have named who were employed in constructing the first freezer?

Ans. I do not.

593 Cross-int. 148. Have you known the name of any person that did plumbing for Mr. Racey, or furnished metallic material to him in connection with any one of the ice-boxes or freezers you have named?

Ans. I have not.

Cross-int. 149. In building the first freezer, who fitted into the wood-work the metallic or iron work.

Ans. I don't know.

Cross-int. 150. Who fastened the pans into the wood-work?

Ans. I suppose the man who put them in. I did not do it.

Cross-int. 151. Who superintended the building of this first freezer?

Ans. Mr. Joseph H. Racey, jr.

Cross-int. 152. Whether or not any model or drawing was furnished you by which you were to be guided in building the freezer?

Ans. There was not.

Cross-int. 153. Did you have a model at any time by which you were guided in building any of the ice-boxes or freezers?

Ans. No.

Cross-int. 154. Do you recollect whether the bottoms of the pans in the first freezer lay horizontally or were slanting?

Ans. The top pans lay very near level.

Cross-int. 155. Do you mean to say that the bottom of the top pans were somewhat slanting? If so, how much so?

Ans. So far as I know they were level.

(At this point Mr. Browne, who is attending the examination as colleague of Mr. Cutter, states to the counsel for the defendants that he (Mr. Browne) was unavoidably absent from the room when the cross-examination beginning with cross-question 109 was resumed after a recess, and requested Mr. Cutter, before such recess, (anticipating such detention,) to proceed with the cross-examination until his (Mr. Browne's) return; that he returned when the examination had reached the answer to the 117th cross-interrogatory; that he has been present since,

594 aiding, as well as he could, Mr. Cutter, in the cross-examination, by suggestions, etc.; that a subject is now to be opened in cross-examination which both of them (Mr. Browne and Mr. Cutter) think cannot be advantageously examined upon except by Mr. Browne himself; he therefore, recognizing the irregularity of resuming now the cross-examination himself, requests the counsel for the defendants to waive such irregularity, and permit him to take the witness.

Counsel for the defendants, having now been informed for the first time of the facts above stated by Mr. Browne, accedes to his request, but feels constrained to insist upon the objection taken by him to the foregoing interrogatories put by Mr. Cutter, and the enforcement hereafter with reference to other witnesses of the rule which requires the examination to be conducted by but one counsel.

The counsel for the defendant objects to all the preceding questions put by Mr. Cutter, viz, from cross-interrogatory No. 109 to cross-interrogatory No. 155, inclusive.)

Cross-int. 156. Have you intended to be understood, when you spoke of furnishing no stuff for the building of the ice-box and first freezer, that Mr. Racey furnished the stuff for these jobs?

Ans. I do.

Cross-int. 157. And that he furnished such things as the nails or screws that were used in those jobs?

Ans. I do. The nails were galvanized and the screws were brass.

Cross-int. 158. There was no material, or part, or thing of any kind, then, making part of either of those jobs, which you furnished? Do you say that?

Ans. Not unless a piece of moulding to go around the top.

Cross-int. 159. Do you mean that you did furnish such a piece of moulding?

Ans. I think I must have done.

Cross-int. 160. What kind of moulding was that?

Ans. A small moulding broke around the top to form a cap,
595 perhaps two and a half inches wide; it extended around three sides of the freezer.

Cross-int. 161. Why did you not make a charge of that moulding to Mr. Racey?

Ans. I did right here, (pointing to his head.)

Cross-int. 162. Why did you make no charge of it on your book?

Ans. If a man pays me when the work is done I enter no charge; if he does not pay me, if it is only twenty-five cents, I do.

Cross-int. 163. Do you remember that Mr. Racey paid cash for this freezer-job?

Ans. I do not, but suppose he did, as no charge was made of it.

Cross-int. 164. Do you remember whether you made him any bill for it, or signed any receipt for the money for it?

Ans. I do not. Mr. Racey has paid me a great many times without a bill or receipt; a great many times.

Cross-int. 165. I find, on the 13th July, 1859, in your ledger, this entry: "13th. Racey, fix floor in market, ½ day, 50c.; bill paid." At the top of the page is written, "1859, July." Is that a charge for labor alone?

Ans. Yes.

Cross-int. 166. I find a charge in the same book which reads thus: "19th. 208 Elm street; rep. doors, &c., ½ day, 50c.; bill." At the top of the page is written, "Aug., 1857." Is that a charge for labor alone?

(Objected to.)

Ans. Supposed to be.

Cross-int. 167. On the same page I find a charge as follows: "17th. Bell, No. 9 Crosby street, hang line, ½ day, at 16⅔ 25c." At top of the page is written, "Aug., 1857." Is that a charge for labor alone?

(Objected to.)

Ans. For labor; but the last two answers relate to men for whom we work and make out bills quarterly.

Cross-int. 168. Are there not many instances in this ledger where charges are made of a day or a part of a day's time, no stuff being furnished?

596 Ans. Yes.

Adjourned to 10 a. m., 24th July, 1868.

FRIDAY, *July 24th*, 1868—10 a. m.

Present, counsel for respective parties.

The cross-examination of the witness, Danford, was resumed:

Cross-int. 169. To what does the entry, under date April 12th, 1867, headed, "J. H. Racey, to building ice-house, moving ice-house," refer?

Ans. The "building ice-house" refers to the second freezer. "Moving ice-house" is shoving the first freezer up three or four feet up towards the wall.

Cross-int. 170. Will you prepare, or cause to be prepared, a schedule of all the charges appearing upon your ledger against Joseph H. Racey, from 1856 down to and including the charge of April 12, 1867?

Ans. I have not the time to do it myself, but I do not object to assisting some one else.

Cross-int. 171. You say that in 1860 you built your house, and you feel certain that the first freezer was built the fall before you moved into your house. When was your house completed? In what part of the year 1860?

Ans. I moved in, I believe, on the 2d September, 1860.

Cross-int. 172. How do you know that you built the first freezer before you moved into your house? Is there any connection between the two things which enables you to fix one date by the other?

Ans. There is no connection, only these things bring the date more in my mind.

Cross-int. 173. How far does the stand which you enclosed with sash and glass from Mr. Racey's other stand in the market?

Ans. I should say a hundred feet, or thereabout.

Cross-int. 174. You say you have seen fish, birds, and game
597 frozen in the chamber of the first freezing-apparatus, what do you mean by frozen? How do you know they were frozen?

Ans. I saw the birds so firmly frozen together that they had to be broken apart by force—had to break the ice between them. I have seen fish frozen, and have had the men hand them to me to look at, that was perfectly stiff like a stone.

Cross-int. 175. When did you see these things for the first time?

Ans. I think I have seen them from 1860 to 1868.

Cross-int. 176. When you speak of their having to break the ice between them, (the birds,) what do you mean? What ice do you speak of?

Ans. I mean that the dampness of the birds froze them together.

Cross-int. 177. Before the eel-tank was put into the cellar, what provision was there for mounting up to charge the pans of the first freezer?

Ans. By a platform and steps at the rear of the freezer.

Cross-int. 178. How were the platform and steps supported?

Ans. By a joist frame.

Cross-int. 179. You say there were openings at the rear ends of the barrels or horizontal tubes. Do you mean one opening to each barrel or tube?

Ans. There are two openings on each side, one above the other.

Cross-int. 180. The upper opening on each side I think you said was some three and a half feet above the floor of the freezer?

Ans. I meant from the floor of the cellar.

Cross int. 181. Your answer, as recorded, to the 30th direct question is as follows: "Two small pipes run through the wall about three and a half feet from the bottom of the inside of the apparatus." Is that answer right or wrong?

Ans. My impression then was that I was speaking as from the bottom of the inside of the cellar; the answer as taken down is not correct.

Cross-int. 182. In the 31st direct question you were asked whether there was any connection between those pipes and the horizontal tubes

or barrels into which those cylinders went, and you answered that you thought not; what makes you think there was no connection?

598 (Objected to.)

Ans. I never saw any connection; I did not put the pipes in.

Cross-int. 183. How far was the floor of the freezer above the floor of the cellar?

Ans. Twelve inches.

Cross-int. 184. How far was the bottom of the horizontal tubes or barrels from the floor of the freezer?

Ans. I should say eight to ten inches from the bottom of the barrels to the top of the floor.

Cross-int. 185. When did James Cashman die?

Ans. I think in 1858.

Cross-int. 186. Where did he live when he worked for you?

Ans. A number of places; the last place was in Mulberry street, near Grand, where he died.

Cross-int. 187. Did he board there or did his family live there?

Ans. His family lived there.

Cross-int. 188. Give the number of the house, or some description of its situation, by which it may be found.

Ans. It is about one hundred and fifty feet from the corner of Grand and Mulberry street, on the west side of Mulberry street.

Cross-int. 189. Did he work on any other job with you that you recollect?

Ans. He worked for us from the third of March, 1855, till he ceased to work from the illness of which he died.

Cross-int. 190. Do you know any living relative of Cashman?

Ans. Not now.

Redirect:

Int. 191. In your cross-examination your attention was called to certain entries in your books, which you said were charges for work done by you or your men, and not connected with any material furnished. If you desire, you can now explain those items.

(Objected to as there is no question put to the witness, nor does there appear to have been any statement made by the witness which requires any explanation.

599 Counsel for the defendants says that as the questions above referred to were put to the witness, the witness expressly desired, in the presence of the other counsel, to explain the entries therein referred to, and the only purpose of the above inquiry was to afford the witness an opportunity so to do.

Counsel for the defendants now requests permission to refer to the cross-questions propounded to the witness relative to certain entries of the book called the ledger, and to inform the witness that he has a right to explain any answer made by him if he desires so to do.

Counsel for the complainant requests the commissioner to state to the witness that if there is any statement heretofore made by him which he desires to correct, he can do so, but submits that if the counsel for the defendants desires anything to be added to any answer by way of explanation, he must call for that thing by properly-framed interrogatories.)

Ans. I only wish to explain, with regard to the entries on my books, that when I do work which is paid for immediately, I do not enter it; if not paid for, I do. Mr. Racey often pays me on the spot. If he did not pay me, it was charged. If he did, it was not.

Int. 192. Have you running accounts with persons in which charges for work are made irrespective of there being no material furnished?

Ans. Certainly.

Int. 193. Were the charges for work done, to which your attention was called in cross-examination and entered upon page one hundred and four of the ledger, of this character, and contained in running accounts?

Ans. They were bills made once in three months.

Int. 194. Were there two or four openings on the rear of the freezer built by you in 1859?

Ans. Four.

600 Cross-examination resumed:

Cross-int. 195. Have you any other books of account, or memorandum-books of labor or material done and furnished by your firm between 1856 and 1867, besides the ledger which has been produced?

Ans. We have.

Cross-int. 196. Have you examined those other books to see if you can find in them any entry relating to the job of the ice-box of 1856, or to the job of the first freezer?

Ans. I have.

Cross-int. 197. Have you found any such entry?

Ans. No.

JOHN W. DANFORD.

Schedule and copy of book-charges of John W. Danford and partner from February, 1856, to April 12, 1867, prepared in compliance with cross-interrogatory 170, in testimony of John W. Danford, inclusive.

[Account-book, page 82, August 24, 1857.]

JOSEPH RACEY, *Centre Market.*

Top to fish-stand, &c.

24th.	75 feet ash blank, at 8 ct., 20 feet stuff, at 4 ct	6 80
Bill	1 W. plank, 34 ct.; paint and paint-skins, 25 ct	59
paid.	3 lb. nails, at 6¼ ct.; screws, 10ct.; cartage, 50 ct.	79
	1 plank, 25 ct.; 2¼ days' work, at 16	4 75
		$12 93

601 [Page 84, Oct. 1, 1857.]

JOSEPH RACEY, *Centre Market.*

Oct. 14.	To casing safe, altering desk, panel-work, repairing floor, &c.	
Bill	18 ft. stuff, at 3½ ct.; 38 feet stuff, at 4 ct	2 15
paid.	2 W. boards, at 29 ct.; moulding, 60 ct	1 18
	5 W. plank, at 25 ct.; 3 joist, 60 ct	1 73
	1 nob-ketch lock	60
	2 dozen screws, at 6¼ ct.; 7 lb. nails, at 6¼ ct	56
	8 ft. oak plank, at 6 ct	48
	5¼ days' work, at 16	10 50
		$17 20

[Page 112, March 18, 1858.]

JOSEPH H. RACEY, *Amity Street.*

18th.	To building pigeon and hen-house, 68 ft. stuff, at 3½ ct.; 30 W. boards, at 29 ct	11 08
Bill	21 boards, at 22 ct.; 6 joists, at 16 c	5 58
paid.	7 wall-strips, at 12 ct.; 10 lb. nails, at 6¼ ct	1 46
	1 cartage, 63 ct.; 1 pair hinges, 20 ct	83
	1 hasp, 2 staples, 12 ct.; screws and wrought nails	24
	4½ days' work, at 16	8 50
		$27 69

[Page 140, July, 1858.]

RACEY, *Centre Market.*

22d.	To fixing stable door	50
26th.	Amity street, repairing floor, shelf, &c., 3½ w. plank at 34ct., 17 ft. stuff at 3½ct	1 89
	2 lbs. nails at 6ct., ½ day	1 12
		$3 59

602 [Page 169, Oct. 14, 1868.]

JOSEPH RACEY, *Amity Street.*

14th.	Fix pigeon-coop, hang sash, &c.	
Bill	4¼ w. boards at 29ct., 1 sash $1.50	2 81
paid.	Sash-cord 8ct., 2 lb. nails at 6ct., ½ day	1 20
		$4 01

[Same page, Oct. 19, 1868.]

19th.	Joseph Racey, fix stable, &c.	
Bill	Amity place, 8 lb. nails at 6ct	48
paid.	1⅛ days	2 25
		$2 73

[Page 189, March, 1859.]

JOSEPH RACEY, Esq., 544 *Houston Street.*

1st.	8 ft. stuff at 4ct., 40 ft. stuff at 3½ct	1 72
	12 w. boards at 29ct., 6 w. plank at 34ct	5 52
Bill	6 joist at 16ct., 12 lb. nails at 6ct	1 68
paid.	1 lock 68ct., 1 lock 75ct., repairing lock 31ct	1 74
	2 padlocks at 25ct., 13 keys at 25ct	3 75
	2 hasps and staples 25ct., buttons 8ct	33
	2 prs. hinges 20ct., 3 wall strips at 13ct	79
	2 boards at 18ct., 1 board 22ct., moulding 15ct	73
	5 dox. screws at 6ct., 6 days' work	12 30
	Fixing shires for folding doors	2 00
	4 knobs at 6ct., 1 key 25ct., 1¼ day	2 99
8th.	Put on bolts, fix door, ¼ day	50
		$33 57

[Page 190, March, 1859.]

Joseph Racey, dog-house.

16th.	5 w. boards at 29ct., 1 board 22ct., 6 feet stuff at 3½ct.	1 88
Bill	2 lb. nails at 6ct., 1½ joist 8ct., ⅝ day	1 45
paid.		$3 33

603 16th. 544 Houston street, rep. dog-house 50
Bill 544 Houston street, attic-blinds, sash and blind fast-
paid. ening, &c.
26th. 3 pr. blinds at 3.75 ct., 2 drops and pins at 8ct 11 41
Bill 2 sash fastenings at 25ct., screws 9 ct 59
paid. 1 bolt 21ct., ¾ day 1 71

$13 71

[Page 193, April, 1859.]

JOSEPH RACEY:

20th. Packing-box 45
21st. Amity street, tree-box and putting up 14 ft. stuff at 3 ct.,
Bill nails 6ct., ⅝ day 1 73
paid.

[Page 221, May, 1859.]

31st. RACEY, 544 *Houston Street.*
Bill Alter doors, &c., moulding 31ct 31
paid. Screws 6ct., ¾ day 1 56

$1 87

[Page 222, June, 1859.]

7th. Racey, planking fish-house.
Bill 2½ w. plank at 34ct., 2 lb. nails at 6ct 97
paid. ⅜ day 75

$1 72

[Page 223, June, 1859.]

RACEY, 544 *Houston street*, (took down partition bolts, base, &c., mould for mason.)
20th. 7 ft. stuff at 4ct., brass bolts and screws, 1.48ct 1 76
Bill Moulding 15ct., 1 keg 25ct., nails 6ct 46
paid. 1½ day 3 00

[Page 223, June, 1859.]

27th. RACEY, *Centre Market.*
Bill Repair stuff 25ct., ⅝ day 1 00
paid.
604 30th. [Page 224, July, 1859.]

Bill Racey, 3 plank at 33ct 99
paid.

[Page, 224, July, 1859.]

11th. Racey, making stand, &c.
Bill 4 ft. stuff at 3½ ct., nails 9 ct., 2 days 4 23
paid. 5 w. plank at 34ct 1 70

13th. $5 93

Bill Racey, fix floor in market, ¼ day 50
paid.

[Page 226, July, 1859.]

22d.	Racey, 2 strips	25
27th.	Gutter for stand, &c.	
Bill	5 ft. stuff at 4½ct., nails 6ct., ¼ day	74
paid.		

[Page 239, July, 1859.]

20th.	Racey, Centre Market, making fish board.	
Bill	31 ft. stuff at 3½ct., nails 6 cts	1 15
paid.	Screws 6ct., ½ day	1 06
		$2 11

[Page 239, July, 1859.]

544 Houston street, Racey, spikes on fence, fix roof, hang sash, stoop, door, &c.

27th.	26 ft. stuff at 3½ct.	91
Bill	3 lb. wrought nails at 14ct., tin 18ct	60
paid.	6 worked boards at 30ct., 3 lb. nails at 6ct	1 98
	½ joist at 16ct., sash-cord 18ct	42
	1¾ days' work	3 50
		$7 41

[Page 241, Sept., 1859.]

15th.	544 Houston street, hen-coop.	
Bill	4 boards at 18ct., butts and screws 12ct	84
paid.	2 lbs. nails at 6ct., ¼ day	62
		$1 46

605 [Page 253, Sept. 1859.]

Joseph Racey, esq., fixing stand in market, &c.:

	1½ w. boards, at 29 ct.; 2 lb. nails; ½ day	1 56
	Alter door, wainscoting, top and gutter to stand, &c., 21 w. boards, at 29 ct	6 09
	92 ft. stuff, at 4 ct.; moulding, 28 ct	3 96
	5 lb. nails, at 6 ct.; screws, 6 ct	36
	4¾ days' work	9 50
		$19 91

21st.	544 Houston street: hang sash, fix dog-house, board windows, &c.:	
Bill	3 w. boards, at 29 ct.; bolt and screws, 25 ct	1 12
paid.	Sash-cord, 18 ct.; sash, 36 ct.; butts and screws, 9 ct	63
	Nails 6ct., ¾ day	1 56
		$3 31

Nov. 18.	1 joist, 1 ct	16
1860.	Amity street, casing doors, ½ day	1 00
Jan. 10.	Cutting-board	50
Feb. 25.	Bills rendered, 338–23–27.	

[Page 256, August, 1859.]

J. H. Racey, Sullivan-street stables:

18th.	52 ft. stuff, at 3½ ct.; moulding, $1.44	3 26
Bill	5 lb. nails, at 6 ct.; 1 joist, 16 ct	46
paid.	12½ days' work	25 00
		$28 62

22d.	Sullivan-street stables, brackets, &c.:	
Bill	1 board, 22 ct.; 4 hold-fasts, at 5 ct	42
paid.	nails, 6 ct.; ¼ day	56
		98

606 27th.

Bill	Sullivan-street stables, shelves:	
paid.	7 ft. stuff, at 3½ ct.; ⅛ day	50

[Page 278, June, 1860.]

Mr. Racey, to making box and repairs:

14th.	Corner-posts, 50 ct.; 7 lb. nails, at 6 ct.	92
	8 doz. screws, at 6 ct.; paint, 38 ct	86
Bill.	3½ boards, at 22 ct.; 5¼ days' work	11 27
		$13 05

[Page 280, June, 1860.]

544 Houston street.

27th.	Hang sash, moulding on base, &c.:	
	Sash-cord, 87 ct.; castors, 25 ct	$1 12
	Nails and screws, 15 ct.; moulding, 36 ct	51
	¾ day	1 50
		$3 13

[Page 304, Aug. 1860.]

RACEY, *Amity street.*

28th.	Hang sash, &c.:	
Bill.	Sash-cord, 31 ct.; ¼ day	81

[Page 305, Sept. 1860.]

RACEY, *Market.*

19th.	Take out safe, make sign, &c.:	
	Screws and nails, 18 ct	18
	19 ft. stuff, at 4 ct.; 1 day	$2 76
28th	To making figure-sign, sash, &c.:	
	20 ft. stuff, at 4 ct.; 2 pr. butts, at 8 ct.; paint, 18ct	1 14
Bill.	2 bolts, at 25 ct.; 3 doz. screws, at 6 ct	68
	Nails, 6 ct.; 2 days' work	4 06
		$8 82

607 [Page 305, Sept., 1860.]

Mr. Racey, Sullivan-street stable-floor, &c.

12th.	3 pr. hinges, at 20 ct	60
	3 doz. screws, at 6 ct.; 10 lb. nails, at 6 ct	78
	2 hooks and staples, 20ct.; 3 days' work	6 20
		$7 58

Entries at end of account-book of bills rendered Nov., 1857.

24th.	J. H. Racey's bill	$16 94
	(Entered opposite page,) cash, $4; cash, $3; cash, $5; cash, $4.94	16 64

[April, 1858]

April 3d.	Joseph Racey	27 70
	(Entered opposite,) 3d March, 1858, cash $10.00.	
19th.	Cash $10.00, cash $5.00. Paid	27 70

[June, 1858.]

June 8th.	Joseph Racey	40 90
	(Entered opposite,) August 7, paid in full	40 90

[October, 1858.]

Oct. 9th.	Racey	10 08
	(Entered opposite,) 16th, paid	10 08

[January, 1859.]

5th.	Joseph Racey, esq	5 51
	(Entered opposite.) March 8th. Paid	5 51

[March, 1859.]

March 30th.	Racey, 544 Houston street	67 50
	(Entered opposite,) 20th June. Paid	67 00

[October, 1860.]

6th.	Racey	30 61
	(Entered opposite,) cash, $12.	

608 *Second book of account, beginning in Feb.*, 1863.

[Page 47, October, 1863.]

	Racey. Ceiling Centre Market, desk repairs, stand, &c.	
	Moulding 250 strips, 50 ct	3 00
	4 w. plank, at 48 ct.; 27 ft. stuff, at 4½ ct	3 14
	7 doz. screws, at 7 ct.; 1 brass handle, 36 ct	85
Bill.	1 hook and eye, 10 ct.; 1 hook and staple, 14 ct	24
	1 pr. lift butts, 14 ct.; 1 lock 2 keys, 50 ct	64
	14 ft. b. walnut, at 16 ct.; butts, 10 ct	2 34
	Nails, 8 ct.; 6½ days	14 63
		8
		$24 92
Nov. 9.	2 joists at 25ct	50
10th.	Make door for hen-house, &c., 10 ft. stuff at 4ct., nails 10ct	50
	Hinges 21ct., screws 8ct., ¼ day	92
		$1 92

14th.	Doors to ice-house, &c., 61 feet stuff at 6ct., 4 w. boards at 37ct	$5 14
	7 lb. nails at 8ct., 3¼ days	8 69
		$13 83
20th.	Platform in cellar, &c., 6 ft. stuff at 4ct., 3 lb. nails at 8ct	48
	½ day	1 13
		$1 61
28th.	Shelves, 8 ft. stuff at 4ct., nails 6ct., tin 38ct.	80
	Bill paid.	

609 [Page 185, April, 1867.]

J. H. Racey. To building ice-house, moving ice-house, &c.

April 12th.	14 joist at 35ct., 21 ft. 2 in. plank at 68ct	$17 22
	43 w. plank at 51ct., 18lb. nails at 10 ct	22 30
	52 ft. stuff 7½ct., 27 ft. stuff at 8ct	6 06
	181 ft. timber at 4ct., and cartages $2 25	9 49
	96 w. boards at 45ct., 3 hinges $2	43 20
	50 ft. 2 in. pine plank at 9ct., 2 bolts at 30ct	5 10
	7¾ days' work at $4	31 00
	3 doz. large screws 65ct., 5 doz. at 10ct	1 15
	Fluch handle 30 ct, 2 lb. r. nails 20 ct	70
	5 plank 48ct., 1 bolt 35ct	2 75
	6¼ days at $4.50	28 13
Bill		$168 06
paid.	¼ day	1 13

[Page 335 of book first, copied from October, 1861.]

Oct. W. H. Racey, esq.

25th.	To building oyster stand, ceiling shelves, &c., 18 ft. stuff	
Paid.	at 3½ct., hard wood 31ct	94
	Furring boards 18cts., w. board 26ct	44
	6 lb. nails at 6ct., 4¾ days	9 86
		$11 24
29th.	Received cash	9 00
Paid		
		$2 24

610 [From first account-book, page 87, August, 1857.]

31st.	To fit up stand, &c.:	
Paid.	Worked boards at 29 ct., 2 joists at 16 ct	6 28
20th.	5 wall strips at 13ct., 5 worked plank at 34ct	2 35
Paid.	4 sash 9 25ct., 2 plank at 33ct., 34 feet stuff at 3½ct	11 10
	1 board at 22ct., 9 lb. nails at 6¼ ct	78
	5 doz. screws at 6¼ cts., 5¾ days' work at 16	14 68
		$32 19
		28

Deposition of William H. Racey, taken, subscribed, and sworn to before R. E. Stillwell, examiner.

FRIDAY, *July 24th*, 1868.

WILLIAM H. RACEY, being duly sworn as a witness for the defendants, deposes and says:

Int. 1. What is your name, age, place of residence, and occupation?

Ans. William H. Racey; thirty-five years of age; reside in Brooklyn, New York; fire-insurance solicitor by occupation.

Int. 2. Are you a brother of Joseph H. Racey, jr.?

Ans. I am.

Int. 3. Were you connected with the business in Centre Market in 1859, carried on by him?

Ans. Yes.

Int. 4. Did you know of his building a freezing-apparatus in the cellar in Centre Market?

Ans. I did.

Int. 5. Were you connected with the business in Centre Market prior to 1859? If so, were you in 1856?

Ans. Yes. I was connected with the business in 1856.

611 Int. 6. During the time that you were there prior to 1859, were you aware of his having and using an ice-box, fitted with pan and pipes?

Ans. I was.

Int. 7. Please describe the arrangement of the pan and pipes, as nearly as you can.

Ans. It was a nearly square box, with a lid opening half-way across the top, and another lid let down half-way in front, fitted on the inside with a metal reaching somewhat more than half-way across the top from the back—the bottom of the pan slanting backwards; there were two drain-pipes leading from the pan (placed in the back corners of the box) leading downwards, and passing through the bottom of the box, to carry off waste water.

Int. 8. When first do you remember to have seen that box?

Ans. In the fall of 1856.

Int. 9. Did you ever know any fish or other animal substances put into that box? If so, what condition were they in when placed there, and what when taken out?

Ans. Yes; they were in a natural state when placed in the box, and when taken out some were frozen, and some partly frozen.

Int. 10. What, if anything, was placed or kept in the pan at the top of the box?

Ans. Ground ice and salt.

Int. 11. Do you know how long that box was continued to be used by Mr. Racey?

Ans. I can't tell how long it was used.

Int. 12. When did you cease your connection with Mr. Racey and the business in Centre Market?

Ans. In April, 1861.

Int. 13. Did you go to the war at about that time?

Ans. Yes, in April, 1861.

Int. 14. When you left in April, 1861, was the freezing-apparatus in the cellar in use?

Ans. Yes, it was, and had been for about eighteen months.

Int. 15. When was it built, as nearly as you remember?

Ans. In October, 1859.

612 Int. 16. By whom was it built?

Ans. Mr. John W. Danford did the carpenter-work; I don't know the name of the man who did the metal-work. I only know him by sight.

Int. 17. Can you describe the internal arrangement of the freezer which you say was built in the cellar in 1859?

Ans. I can partly. There were six tubes perpendicular in the freezer, leading from two pans on the top to two horizontal tubes in the bottom, and the ice was put in the pans on the top; salt, also, was used in the freezer.

Int. 18. For what purpose was this freezer used?

Ans. For freezing fish.

Int. 19. When last did you see the inside of that apparatus?

Ans. A couple of weeks ago.

Int. 20. Was there any change then observed by you in its internal construction?

Ans. No.

Int. 21. So far as you then observed, was it in the same condition as when you first saw it?

Ans. It was.

Int. 22. Did you know of the apparatus being shown and explained to different persons after it was completed?

Ans. Yes.

Int. 23. Can you state how fish were put in there—that is, in what condition, and in what condition they were taken out?

Ans. Put in in a natural state, and taken out frozen.

Cross-examined by counsel for plaintiff:

Cross-int. 24. The fish that were put into the ice-box were put in in layers alternately with layers of ice?

Ans. Yes.

Cross-int. 25. You say you don't know how long that box was continued to be used by Mr. Racey (in the manner described, I mean of course;) do you know whether it was one year, two years, or three years?

613 Ans. I am unable to state positive how many years.

Cross-int. 26. Do you know about how much it was used? I mean whether regularly or occasionally, and about how many fish were put into it first and last?

Ans. Whatever Mr. Racey's business warranted at that time.

Cross-int. 27. Were fish kept in that ice-box regularly, or only occasionally?

Ans. Whatever the business required.

Cross-int. 28. Can you name any one to whom fish which had been kept in that ice-box were sold?

Ans. To his customers at that time; I forget their names. The fish were not sold in a frozen state, but had to be thawed in order to be cleaned; consequently, the customers did not know they had been frozen.

Cross-int. 29. When you went to the war in April, 1861, did you leave any business of yours to be carried on in your absence by any one for you?

Ans. I left my brother Joseph to attend to the business of which I was nominal owner. It was a sort of family concern.

Cross-int. 30. When did you return from the war?

Ans. I quitted the Army in June, 1864.

Cross-int. 31. Before going away to the war, had you any business of your own, independently of your brother?

Ans. Yes, I was a politician and a fireman.

Cross-int. 32. Did Mr. John W. Danford, carpenter, occasionally do jobs for you, as well as for your brother?

Ans. He did.

Cross-int. 33. What business did you have requiring work in his line, except the business which you carried on with your brother?

Ans. None that I now remember; I don't know whether I gave him any work about the engine-house or not.

Cross-int. 34. In whose name was the fish-business of yourself and your brother carried on?

Ans. J. H. Racey and Co. and Racey & Co.

614 Cross-int. 35. Were not the bills against that concern sometime' made out against you personally?

Ans. I have no recollection of that.

Cross-int. 36. All bills, if I understand you, for anything connected with your fish-business, were made out either in the name of J. H. Racey & Co. or Racey & Co.?

Ans. What bills we did pay were, I should say, made out to one or the other of those firms. Some things were paid for for which we never received bills.

Cross-int. 37. Did you not at one time, before you went to the war, have any oyster-stand built by Mr. Danford?

Ans. That comes under the head of the family concern again, and Joseph H. Racey superintended it.

Cross-int. 38. Did you, in fact, (no matter who superintended it,) have an oyster-stand built for you?

Ans. An oyster-stand was built for the concern some time before I went to the war—for me as nominal owner.

Cross-int. 39. Do you mean that it was billed to you, although, in fact, ordered by and intended for the concern? Is that what you mean by "for me as nominal owner?"

Ans. We paid by instalments, as the thing was going on, I think; furthermore I have no recollection of it.

Cross-int. 40. Paid what by instalments?

Ans. Money, from time to time, on account.

Cross-int. 41. Do you mean that Mr. Danford kept a running account with your firm, which was paid by instalments?

Ans. I mean to say the concern paid Mr. Danford when it was able. I do not believe Mr. Danford kept a regular running account.

Cross-int. 42. Now, I repeat the question which I have asked twice before, and which I cannot see that you have answered. Did you have an oyster-stand built for you before you went to the war?

Ans. One for the concern.

Cross-int. 43. Only one?

Ans. I have no present recollection; I have been from the market since 1861—seven years ago.

615 Cross-int. 44. Do you know of more than one oyster-stand built for and used by the firm of Racey & Co. at any time?

Ans. There might have been two or three; I am unable to say at present.

Cross-int. 45. Do you remember more than one?

Ans. I am unable to say at present.

Cross-int. 46. Do you remember or not more than one?

Ans. There might have been two or three.

Cross-int. 47. Do you, or not, remember more than one?

Ans. I am unable to say.

Cross-int. 48. Was there more than one oyster-stand built for Racy & Co. before you went to the war?

Ans. Yes, sir.

Cross-int. 49. How many?

Ans. I am unable to say; my time was occupied considerable outside of my business, and I paid more attention to that.

Cross-int. 50. What was that outside business which you say occupied the most of your time?

Ans. I was a member of the fire-department, and a member of the Young Men's Union Democratic Club, and a member and secretary of the Fourteenth Ward Democratic Club.

Cross-int. 51. Was it the paid fire-department you belonged to?

Ans. Not quite.

Cross-int. 52. Is there more than one oyster-stand at your brother's place of business now?

Ans. I don't believe there is.

Cross-int. 53. Does his business require more than one?

Ans. I don't know.

Cross-int. 54. Don't you know that he had one?

Ans. No, sir; I don't know anything about it.

Cross-int. 55. Do you know that he ever had one?

Ans. Yes, sir.

Cross-int. 56. And that was before you went to war?

Ans. Yes, sir.

Cross-int. 57. And who built that one?

616 Ans. Mr. Danford, I think, built one. He has owned other oyster-stands besides that, I think, also.

Cross-int. 58. Do you know who built the others?

Ans. I can't recollect; I am unable to say.

Cross-int. 59. This one which Mr. Danford built, you think, and which was before you went to the war, will you please describe what it was?

Ans. I presume it is the same as any other. That is about all I know. It is an ordinary New York oyster-box.

Cross-int. 60. Did it consist of two ends, and a side, and a shelf on front.

Ans. It did.

Cross-int. 61. Worth at that time about $10 to build, do you think?

Ans. It might have been $10, and it might have been $100.

Cross-int. 62. As usually made of common painted pine?

Ans. In that way they might cost $10, with Georgia pine and marble slab, grained and varnished in good style, $100.

WM. H. RACEY.

Adjourned to 10 a. m., 25th July.

SATURDAY, *July 25th*, 1868—10 a. m.

Present, counsel for respective parties.

Adjourned to

617 *Deposition of William Seavey, taken, subscribed, and sworn to before N. Austin Parks, examiner.*

OCTOBER 21, 1868.

WILLIAM SEAVEY, recalled by respondents, doth depose and say, in answer to interrogatories propounded to him by Edward Avery, esq., as follows, viz:

Int. 1. Have you been previously examined as a witness in this case?

Ans. I have, in behalf of the complainant.

Int. 2. In that previous examination, in answer to interrogatories numbered 5 to 9, inclusive, you have stated that certain alterations were made in your apparatus at Charlestown. Will you now state what, if any, difference in the working of the apparatus you have observed since those alterations were made?

Ans. I have observed a difference in the working of it. Before the alteration the articles or fish put at or near the top of the preserving-chamber would not become frozen as soon as those at the bottom of the chamber, and we had to remove those from the top of the chamber, after they had been there a certain length of time, to the bottom of the chamber, to have them properly frozen. Since the alteration, we have found that they froze as well at the top as at the bottom of the chamber, and as quick. They froze as well after the alteration, in all parts, as they did in the bottom before the alteration.

Int. 3. Did you observe any perceptible difference in the atmosphere of the preserving-chamber, after the alteration, as to dampness or humidity?

Ans. I did not.

Int. 4. Have you experimented with the apparatus now produced before the examiner, called "Good's patent for preserving bodies of deceased persons by cold air and without the application of ice, patented August 17th, 1843, and September 12th, 1854," and so
618 marked on the cover? If yea, will you describe such experiment and the result?

Ans. Yes, I have. I experimented by laying fish on the movable pan, or rack, raised about four inches from the bottom. I filled the top pan, that sits into the apparatus, with salt and ice. I stopped the hole in the gutter at the outside upper edge, at the smaller end of the apparatus, to prevent the water in the gutter from draining out; then filled the gutter with water, thus preventing the introduction of external air into the preserving-chamber where the fish were laid. We covered it with the outside top-cover, thus preventing the contact of the outer air with the salt and ice. In twenty-two hours from the time we placed the fish there we opened it and found the fish frozen perfectly solid.

Int. 5. State, if you please, how you obtained this apparatus.

Ans. I sent an agent to Mr. Good, in Philadelphia, for it, and had it brought here by Adams & Co.'s Express.

Int. 6. Has any change been made in it in any particular since you received it?

Ans. There has.

Int. 7. Please state what that change was.

Ans. When we received it it had a heavy coating of paint on the whole inside of the receiving pan, the same as on the outside. We removed that from the inside with a solution of potash and water; that is all the alteration.

(Adjourned to Saturday, October 24, at 10 a. m.)

OCTOBER 24, 1868.

Cross-examination by Causten Browne, esq.

Cross-int. 1. Who made the alterations you speak of in your apparatus at Charlestown?

Ans. John McLeod, tinsmith, of Charlestown.

Cross-int. 2. When were they made?

Ans. I think it was some time last spring, but won't be positive; it may have been a year ago last spring. I have got the bill of it.

619 Cross-int. 3. Was the apparatus altered upon more than one occasion?

Ans. Well, we applied to them to alter it, but they were two or three different times to work on it. It was one job.

Cross-int. 4. About how long was it from the beginning to the end of the job of making these alterations?

Ans. I should judge it was a week.

Cross-int. 5. Give the names of the persons who worked for you during the first half of the year 1867 in and about your preserving-house?

Ans. I can tell some of them, but not all. Thomas Nolan and Joseph M'Clure. That's all I'm positive about.

Cross-int. 6. Do these two men work for you still?

Ans. They do.

Cross-int. 7. Were there any men who worked for you, in or about your preserving-house, in the first half of the year 1867 who do not work for you now?

Ans. There were men at work at times whom we call lumpers, that we picked up when we wanted any extra help.

Cross int. 8. Do you mean that, with the exception of such temporary workmen, there was nobody who worked for you, in or about your preserving-house, in the first half of 1867 who does not work for you now?

Ans. I mean that the two first-mentioned men are the ones that had special charge of that place over there. When they had a good deal of work to do, and we could spare any help from our store in Boston, they took any that we could best spare. If that was not sufficient, they hired, as before said. (The question being repeated, witness says:) I couldn't tell. We are changing our help all the time.

Cross-int. 9. In your former deposition you described the alteration which had been made in the preserving-apparatus as the cutting of holes in the top pan and in the bottom pipes. Was there any other alteration made at that time, or afterwards, in any part of the preserving-apparatus, however slight such alteration, or however immaterial you may think it to be?

(Objected to.)

620 Ans. Not to my knowledge.

Cross-int. 10. I understand that, with exception of these holes, there is no difference between compartments 2, 3, and 4 in your preserving-house. Is that so?

Ans. It is so.

Cross-int. 11. And those holes are made in the top pan and bottom pipes of compartments 2 and 4, and not in those of compartment 3; is that so?

(Objected to.)

Ans. I think that to be the case. I am pretty positive that is the case. There are two of the three that are altered, and I believe those two to be numbers 2 and 4.

Cross-int. 12. There are no holes or openings in the wood-work over or near the top pans with the holes cut in them, are there?

(Objected to.)

Ans. With the exception of the scuttle, which we remove to charge the pan with ice, I know of none.

Cross-int. 13. You mean to be understood that before those holes were made in the top pan and bottom pipes of compartments 2 and 4, if these be the right numbers, it was your regular practice to remove the

fish or other articles from the top of the chamber, after they had been there a certain length of time, to the bottom of the chamber. Is that so?

Ans. I do.

Cross-int. 14. How did you take the articles out of the chamber from time to time as you required them for consumption? I mean how did you get at them?

Ans. Through a door on the side of the chamber at or near the level of the floor.

Cross-int. 15. What is the height, inside, from the floor to the bottom of the top pan in compartments 2, 3, and 4?

(Objected to.)

Ans. I should judge from eight to nine feet. I could not say positive.

Cross-int. 16. Who was the agent whom you sent to Mr. Good in Philadelphia for the apparatus marked "Good's patent," etc.?

621 Ans. Jonas Hallstran.

Cross-int. 17. Did you make any experiment with the apparatus before removing the coat of paint from the inside of the receiving-pan?

Ans. We did.

Cross-int. 18. What did you do?

Ans. We froze, the same as we did after removing the paint, but it didn't freeze as quick as it did after the paint was removed.

Cross-int. 19. Did you freeze just as perfectly before as after removing the paint, only taking longer before than after?

Ans. We did.

Cross-int. 20. How much longer did it take before removing the paint than it did afterwards to freeze equally well?

Ans. I couldn't state the exact difference of time. I should think one-third longer.

Cross-int. 21. When you froze fish in the apparatus at Charlestown, after it had been altered by cutting the holes in the top pan and bottom pipes, did the apparatus in which you so put the fish to be frozen contain frozen fish, deposited there for preservation?

Ans. When we commenced putting them in, there was no fish of any kind in there.

Cross-int. 22. You mean that you froze fish by putting them into a compartment having the alterations mentioned, said compartment not having at the time any frozen fish already in?

Ans. I mean to say that we put fish into that compartment, after the alterations, in a perfectly limpid state, and that it contained no other fish at that time, and that we froze them perfectly solid.

Cross-int. 23. And this was the freezing which you have spoken of as accomplished at the upper part of the chamber as perfectly as at the lower part?

Ans. It is.

Cross-int. 24. When you used the apparatus marked "Good's patent," etc., with ice and salt, and froze fish in it, as you testified, what proportion of ice and salt did you use?

Ans. I cannot designate any specified amount of either.

Cross-int. 25. Who, if anybody, assisted at this experiment or witnessed its performance?

622 Ans. Some of our workmen ground the ice and I superintended the filling of it. I can't tell who it was.

Cross-int. 26. Did you have anything between the perforated-tin follower and the floor of the apparatus?

Ans. Little blocks of wood, to raise it somewhere from three to four inches. The intervening space was left empty.

Cross-int. 27. Did you freeze fish more than once in the apparatus in that way?

Ans. We did, as stated before: once before and once after the paint was removed.

Cross int. 28. About the same number and the same kind of fish each time?

Ans. I think the first time we froze three, and the latter two fish, and all of the same kind.

Cross-int. 29. What kind of fish?

Ans. Fresh haddock, weighing from two to four pounds apiece, as I should judge.

Cross-int. 30. Did you lay them right on to the tin follower?

Ans. I did.

Cross-int. 31. Was the tin follower put at the same distance from the floor of the apparatus in each of the two experiments?

Ans. It was.

WM. SEAVEY.

Deposition of John Peak, taken, subscribed, and sworn to before N. Austin Parks, examiner.

OCTOBER 24, 1868.

JOHN PEAK, produced by respondents, doth depose and say, in answer to interrogatories propounded to him by Edward Avery, esq., as follows, viz:

Int. 1. State your name, age, residence, and occupation.

Ans. John Peak; age, sixty-two years; residence, Boston, Mass.; occupation, funeral undertaker.

623 Int. 2. How long have you been engaged in that business?

Ans. Twenty-eight years.

Int. 3. Have you used an apparatus similar to the one now shown you, marked "Good's patent for preserving bodies," etc.? If yea, when first, if you can state.

(Objected to as leading and incompetent.)

Ans. I have. I think in 1856 or '57. 1856 I think it was that I bought it. It might have been in 1855; I don't know.

Int. 4. Please describe the manner in which you used the apparatus, and the apparatus which you did use.

(Objected to.)

Ans. When I first used it I used it according to the directions I received from Good—that was, to put ice underneath the body, and then lay the tin follower on, and then the body on the follower. Then I filled the top pan up with ice and put it into its place, and then turned water into the gutter, making it air-tight. That was his directions, and in that way I made it air-tight. I afterwards made experiments with it by leaving out the ice underneath, and in that way found I could keep the body just as well as to have the ice under and over too. Then, if I had extreme cases—bad cases—I would crush the ice up fine and mix salt in it. In that way I found that I could freeze the body. The apparatus is made of tin, of two thicknesses, about an inch apart; between the two thicknesses is filled in with coarse sheep's wool—mine was. There was a pan that set into a gutter filled with water to make it air-tight, the top of the pan having a lip going over into the gutter. There is a lid likewise that covers the ice, that likewise sets down into the water, making the ice in the pan in an air-tight space.

Int. 5. Please examine the apparatus now shown you, marked "Good's patent, etc., N. A. P., Ex'r," and state in what, if any, particulars it differs from the apparatus you use, as stated in your previous answer.

(Objected to.)

Ans. I believe that is just like mine. I don't see any difference in it.

624 Int. 6. State when first you froze any body in the apparatus used by you, as previously stated, and state fully the process by, or manner in, which you did it.

Ans. Well, I should think I had had the apparatus from two to three years before I froze a body in it. I froze it by putting ice and salt in the upper pan, and in those cases I used generally to put ice in the bottom, where I wanted to freeze the bodies. I placed the body in the apparatus as I usually do—with ice underneath it—put the pan in, and filled it up with ice and salt instead of alone.

And in answer to cross-interrogatories propounded to him by Causten Browne, esq., deponent saith as follows, viz:

(De bene esse.)

Cross-int. 1. Were the directions which you received from Good written or verbal?

Ans. Verbal. I was there at his place, and he showed me how to prepare it.

Cross-int. 2. Was that in Philadelphia?

Ans. Yes, sir.

Cross-int. 3. By the tin follower do you mean the perforated piece of tin lying horizontally next the bottom of the apparatus?

Ans. It lays over the ice on the bottom.

Cross-int. 4. Where is the apparatus now which you got from Mr. Good?

Ans. The only one I've got is at Newburyport.

Cross-int. 5. Is that the one which you received from Mr. Good, as testified in your direct examination?

Ans. It is one of them.

Cross-int. 6. How many in all did you receive from Mr. Good?

Ans. Two.

Cross-int. 7. One is in Newburyport, you say. Where is the other?

Ans. I broke it up.

Cross-int. 8. When?

Ans. Well, I should think from four to five years ago.

Cross-int. 9. Were the two exactly alike in construction?

625 Ans. They were, for anything that I ever saw.

Cross-int. 10. How long after getting the first one, namely, the one about which you testified in your direct examination, did you get the second one?

Ans. At the same time.

Cross-int. 11. How long has the one that is in Newburyport been there?

Ans. About three months ago I lent it to a friend that has set up a wareroom down there. Not far from that, I think.

Cross-int. 12. What is his name?

Ans. F. S. Pinkham.

Cross-int. 13. What did you pay Mr. Good for the two apparatus and right to use them?

Ans. I think two hundred dollars.

Cross-int. 14. Were the two of the same size?

Ans. No, sir; one was large and one small; one three and a half, I think, and the other six feet.

Cross-int. 15. Did you get a bill of sale or any writing from Mr. Good at the time you made this purchase?

Ans. I did.

Cross-int. 16. Which of the two was it that was broken up, the large or the small one?

Ans. The large one.

Cross-int. 17. In which of the two did you use salt and ice for freezing a body; or did you do this in both?

Ans. In the large one.

Cross-int. 18. Can you say how many times you so used the large one before it was broken up?

Ans. I cannot. Not a great many times, because I didn't have a great many times when I wanted to freeze the body.

Cross-int. 19. Are you sure that you so used it more than once?

Ans. I am.

Cross-int. 20. Are you sure that you so used it as many as five times?

Ans. Well, I don't remember in particular; but I know I have used it as such to freeze bodies.

626 Cross-int. 21. Can you give the name of any person whose body you so froze in it?

Ans. I do not recollect the names.

Cross-int. 22. Do you not recollect the name of any one?

Ans. I do not. I'm a very poor hand to recollect names. If you asked me the names of persons I buried three weeks ago I couldn't tell without referring to my books.

Cross-int. 23. Can you by referring to your books give the name of any person whose body you so froze in this apparatus you got from Good?

Ans. I cannot, for the reason that between six and seven years ago my books and papers were all destroyed by fire when my ware-room was burned.

Cross-int. 24. Can you not give the residence, or some circumstances about the case, of some one of the persons whose bodies you so froze with this apparatus, whereby we may be enabled to identify the instance?

Ans. I cannot give the residence, because I never thought it would be called up again, nor took notice of it. I know they were bad cases.

Cross-int. 25. You mean by bad cases those where decomposition was rapidly going on, do you?

Ans. I do.

Cross-int. 26. So rapidly that it could not be arrested short of freezing the subject?

Ans. That is the only way in which you can take away the scent from such bodies.

Cross-int. 27. The object of your freezing these bodies, then, was to stop the offensive smell?

Ans. It was.

Cross-int. 28. Do you remember how long in any one instance you took to freeze the body sufficiently for this purpose?

Ans. I do not.

627 Cross-int. 29. When you said that the apparatus you got from Good was just like the apparatus here present, marked Good's patent, etc., N. A. P., Ex'r, had you examined the arrangement for draining the apparatus?

Ans. I had.

Cross-int. 30. I refer to the arrangement of the short pipe, which descends from the bottom of the receiving-pan at the foot end, in connection with the pipe at the foot end of the preserving-chamber, through which latter pipe the drainage from the former pipe takes place; and also the drain arrangement at the bottom of the foot end of the apparatus, where the drain-water is finally discharged. Do you mean to say that as regards these particulars the apparatus you got from Mr. Good was constructed just like the apparatus here present?

Ans. I think they were the same.

Cross-int. 31. Why did you break up the large apparatus you got from Good?

Ans. Because by experimenting I made another one, less bulky, that would answer the same purpose; that is, it would preserve the bodies for a few days. I never tried to freeze one in it.

Cross-int. 32. Where is the apparatus that you made new?

Ans. At my shop, in Boston, No. 146 Friend street. I have some of them there.

Cross-int. 33. Was there no objection to the apparatus you got from Mr. Good except its bulk?

Ans. That was the only reason why I got up the new ones, because I could get it in two parts and get it up and down stairs easily.

Cross-int. 34. Was the operation of the apparatus you got from Good satisfactory?

Ans. It was, all but the bulk and heft. It was a good deal heavier than mine.

Cross-int. 35. Who assisted you in the use of this apparatus of Good's during the time that you had it in your possession? I speak of the large apparatus.

Ans. I don't remember what hands I had then. I'm shifting hands often, and it's so long ago that I can't remember.

Cross-int. 36. Can't you remember the name of any one person
628 who used to be employed by you in using this apparatus at any time while you had it?

Ans. I don't remember only my only son, who used frequently to go with me. Sometimes I would take one hand out of the shop, sometimes another.

Cross-int. 37. What is that son's name, and where is he?

Ans. John H. Peak. He is in Boston.

Adjourned to Monday, Oct. 26, 9½ a. m.

Resumed Oct. 26, 9½ a. m.

Cross-int. 38. In the apparatus here present, marked Good's patent, etc., the outsides of the walls of the receiving-chamber appear to fit pretty closely to the inside walls of the apparatus when the receiving-pan is put in place. Do you so understand it?

Ans. It fits at the top but not at the bottom of the pan. The pan is made on a level.

Cross-int. 39. You have said that you could not state how long it took you to freeze any one of the bodies which you did freeze in the apparatus you bought of Mr. Good. Can you state whether it took you more or less than twenty-four hours to do it?

Ans. I cannot tell when the frost began, because we never opened to the body until we wanted to take it out to put it in the coffin—some three or four days, and sometimes longer—so that I've no means of knowing how long it took to freeze.

Cross-int. 40. I suppose you renewed your charge of ice and salt from time to time?

Ans. We did, according to how long we wanted to keep it; we didn't calculate to let the ice and salt get out.

Cross-int. 41. How did you know that the body was frozen when you took it out?

Ans. I felt of it and found it frozen.

Cross-int. 42. These were adult bodies, of course?

Ans. Yes, sir; I never froze a child.

Cross-int. 43. Did you ever have any difficulty about the under
629 side of the body, and the tin follower, and the ice below the tin follower, and the floor of the apparatus on which the ice rested, being some or all of them frozen together?

Ans. Never, that I recollect of.

Cross-int. 44. You never had any difficulty, such as having the under side of the body and the tin follower frozen together, so as to make the removal of the body from the apparatus difficult?

Ans. I never did.

Cross-int. 45. You never had any difficulty, such as the receiving-pan being frozen or jammed by frost in its place against the inner walls of the apparatus, so as to make it difficult to get the pan out, did you?

Ans. I never did. It might sometimes stick a little, but I never had any difficulty with it.

Cross-int. 46. Why did you put ice under the body when you put ice and salt in the receiving-pan, as you have testified?

Ans. Because that was the direction of Mr. Good, and I didn't know as it would do without it until I tried the experiment.

Cross-int. 47. You don't understand me. You have stated that some two or three years after you got the apparatus you put ice and salt in it for the purpose of freezing a body, and that when you did so you put at the same time ice under the body. What did you want of any ice under the body?

Ans. I went upon the principle that the more ice I had the colder it would be.

Cross-int. 48. About what proportion of salt did you use with the ice in the receiving-pan?

Ans. I can't tell what proportion. I used to crush the ice into small pieces, and then scatter over rock salt amongst the ice. I never took notice how much I used.

Cross-int. 49. When the corpse is packed in ice in the old way, without the use of any patent apparatus, is the outside of the corpse frozen?

Ans. Yes, sir.

Cross-int. 50. So that to the touch it is hard?

Ans. Yes, sir; strike on it and it is hard.

630 Cross-int. 51. This is without the use of freezing mixture, but with ice alone?

Ans. Yes, sir.

And in answer to direct interrogatories, resumed, deponent saith:

Int. 7. When the body was packed in ice alone in warm weather, the ice being placed round about the body, were you enabled to actually freeze the body or only check decay?

(Objected to.)

Ans. I have frozen the body. I always covered the case up.

JOHN PEAK.

Deposition of Jacob L. Seixas, taken, subscribed, and sworn to before Kenneth G. White, examiner.

WEDNESDAY, *July* 21, 1869.

Present, Edward Avery, counsel for defendants; T. J. Cutter, counsel for complainant.

JACOB L. SEIXAS, called and sworn as a witness on the part of defendants, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Jacob L. Seixas; age, fifty-seven; place of business, 31 and 33 Walker street; residence, 112 West Forty-second street; I am a wholesale dry-goods merchant.

Int. 2. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market; and if so, how long have you known him?

Ans. I do, sir. I have know him, I should think, not less than twenty-five years; it may be longer.

631 Int. 3. Do you know his general reputation for truth and veracity?

Ans. I think I ought to, after having dealt with him for twenty-five years at least; and all I have heard of him was correct.

Int. 4. What is his general reputation for truth and veracity?

(Objected to on the ground that no sufficient foundation has been laid for the question.)

Ans. Very good, sir.

Cross-examination:

Cross-int. 5. You are a friend of Mr. Racey's, are you not?

Ans. I am no friend of Mr. Racey's no more than that I go to market and purchase of Mr. Racey what I require of what he sells.

Cross-int. 6. What have you had to do with him during the time you have known him?

Ans. Buy fish of him, sir.

Cross-int. 7. Anything else?

Ans. I never bought anything else of him except poultry. I have bought fish and poultry of W. (Mr.) Racey.

Cross-int. 8. Have you traded with him during the whole twenty-five years you have known him?

Ans. Yes, sir.

Cross-int. 9. Have you sold goods to him?

Ans. Well, he has come down to my store and bought some few goods for his family use.

Cross-int. 10. During what period of time?

Ans. Within the last ten years.

Cross-int. 11. Are you buying fish of him at present?

Ans. Yes, sir; whenever I require it for my family use.

Cross int. 12. And he buys goods from you?

Ans. He is no regular customer of mine, sir. I suppose whenever he wants anything for his family use he comes down to my store to buy it, and I oblige him by letting him have it, as he is no regular customer of mine.

632 Cross-int. 13. But he has bought goods of you, more or less, during the last ten years, has he not?

Ans. Well, I suppose, off and on, he has, sir, whenever he wanted them.

Cross-int. 14. Have you an account with him?

Ans. I will state what kind of an account I have with Mr. Racey. I

have told Mr. Racey that whenever he wanted any article in my store, that I would take it out in the articles he dealt in, fish and poultry.

Cross-int. 15. I do not see that you have answered the question. Will you please state whether there is an unsettled account now existing between you?

Ans. No; I think it is about square now. I don't think either one of us owes the other. That is my impression at the present moment. Mr. Racey does not have bills with me unless he comes down to the store and gets goods. I pay Mr. Racey for all I get if he don't owe me for goods.

Cross-int. 16. Do you always pay cash for the goods you buy of Mr. Racey, and when you buy them?

Ans. I do, if I have not a bill against Mr. Racey.

Cross-int. 17. Are you acquainted with the other traders in Centre Market?

Ans. Yes, sir, some of them; people whom I deal with; no others.

Cross-int. 18. How many of them?

Ans. I have a butcher, sir, by the name of William Lalor, and two women of whom I buy vegetables. I think one is Mrs. Cassidy and the other Mrs Shrimpton.

Cross-int. 19. You say that the general reputation for truth and veracity of Mr. Racey is very good. What do you understand by the words "general reputation for truth and veracity?"

Ans. After having dealt with a man twenty-five years, and never having caught him in an untruth, and his manner of dealing fair and correct, by saying to his customers, "if an article was not first-rate, he would tell them so;" that is what I call a reputation for veracity and truth.

633 Cross-int. 20. Have you ever discussed with other parties Mr. Racey's character for truth and veracity?

Ans. No, sir; but I have heard his customers say that Mr. Racey is one of the few men in the market they could believe.

Cross-int. 21. Who have you heard speak of Mr. Racey's character for truth and veracity?

Ans. Mr. Tobias I have heard speak of him; Mr. Jonas N. Phillips I have heard speak of him, and I have heard Mr. Emanuel B. Hart; and to wind up, I never heard any one doubt his reputation for truth and veracity.

Cross-int. 22. What is the full name of Mr. Tobias; what is his business, and where does he do business?

Ans. Alfred Tobias; he is a wealthy man, living on his means; he is not in business; he lives in Fourth street, opposite Washington parade-ground.

Cross-int. 23. When did you hear him speak of Mr. Racey's character for truth and veracity, and what did he say?

Ans. Well, sir, it is impossible to name the time; but when we have met, and casually speaking of purchases made in the market, and talking of buying fish of Mr. Racey, I have heard him say that he could depend upon Mr. Racey when he could not depend upon others.

Cross-int. 24. How many times has he so spoken to you?

Ans. I could not tell you, sir, as we never made Mr. Racey's character the subject of conversation.

Cross-int. 25. How, then, came the remark to be made that you have just stated as being made by Mr. Tobias?

Ans. I refer to the answer above—the answer to twenty-third cross-interrogatory.

Cross-int. 26. Is that all the answer you have to give to the last question?

Ans. That is all, sir.

Cross-int. 27. Did such conversation occur more than once with Mr. Tobias?

Ans. I could not tell you, sir.

Cross-int. 28. How long ago did it occur?

634 Ans. Well, I could not tell you that.

Cross-int. 29. What is the business of Mr. Jonas N. Phillips, and where is his place of business?

Ans. He was formerly president of the assistant board of aldermen; what his business is I don't know, sir, but I have heard him speak in the highest terms of Mr. Racey. I do not know where his place of business is.

Cross-int. 30. When, and how many times, have you heard Mr. Phillips speak of Mr. Racey's character for truth and veracity?

Ans. Repeatedly.

Cross-int. 31. When was the last time?

Ans. I could not tell you. It is impossible to fix time or the dates.

Cross-int. 32. What did Mr. Phillips say at any one time in regard to Mr. Racey's character for truth and veracity?

Ans. Mr. Phillips several times told me that whatever Mr. Racey said in relation to his articles for sale he (Phillips) could depend on, and that that was one of the reasons why he liked to buy of Mr. Racey; that whatever he told him he could depend upon.

Cross-int. 33. You always found the articles you bought of Mr. Racey as he represented them, did you not?

Ans. Always.

Cross-int. 34. How, then, came Mr. Phillips to say to you several times what you have just stated that he said?

Ans. Because he said that he had been in the habit of going to other markets, where they had deceived him, and he had been recommended to Mr. Racey for fair dealing.

Cross-int. 35. But you having no complaint to make against Mr. Racey in regard to his fish, how came Mr. Phillips to go to you and tell that story several times?

Ans. We would meet in the market, and casually speak of the manner in which we were treated by the respective parties with whom we dealt.

Cross-int. 36. And so he, every time you casually met in the market, repeated to you substantially what you have just stated?

635 Ans. I did not say so, but I say now several times out of many hundred times that I met Mr. Phillips in the market.

Cross-int. 37. But you both being perfectly satisfied with Mr. Racey's fish, what occasion had Mr. Phillips to make that statement to you more than once?

Ans. I refer you to my answer to cross-interrogatory thirty-five.

Cross-int. 38. Who is Emanuel B. Hart, what is his business, and where is his place of business?

Ans. I think he is a broker, sir; he was formerly a member of Congress from this city. I could not tell you his place of business.

Cross-int. 39. When, and how many times, have you heard Mr. Hart speak of Mr. Racey's character for truth and veracity?

Ans. I have heard Mr. Hart say that he would rather deal with Mr. Racey than any man he ever dealt in the market with, because he could

depend upon whatever Racey told him. I can't tell how many times he spoke of Racey.

Cross-int. 40. Told him about what?

Ans. About the articles Racey sold him.

Cross-int. 41. Did he say that to you in substance more than once?

Ans. I do not recollect.

Cross-int. 42. How long ago was it?

Ans. That I could not tell. If I recollected the names of parties that I met at Mr. Racey's stand, I could tell you the names of many more who have spoken in the same manner of Racey.

Cross-int. 43. The remarks of the parties you refer to with reference to Mr. Racey had reference to the quality and character of his fish being as he stated them to be?

Ans. Certainly; and if he had been an unfair man and guilty of telling untruths, these gentlemen would not have spoken of him in the manner they did.

(That portion of the answer after the word "certainly," objected to as not responsive.)

JACOB L. SEIXAS.

636 *Deposition of Jacob Michaelis, taken, subscribed, and sworn to before Kenneth G. White, examiner.*

JACOB MICHAELIS, being called as a witness on the part of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Jacob Michaelis; my age is forty-five; my residence is 57 Amity street; I am a merchant in New York City.

Int. 2. Do you know Joseph H. Racey, fish-dealer in Centre Market? If yea, how long have you known him?

Ans. Yes, sir; for the last eleven years.

Int. 3. Do you know his general reputation for truth and veracity?

Ans. Yes, sir.

Int. 4. What is it?

Ans. I know nothing but good of him.

Cross-examined:

Cross-int. 5. What is your religious faith?

Ans. Israelite.

Cross-int. 6. What have you had to do with Mr. Racey during the last eleven years?

Ans. We met frequently in social intercourse and in business transactions, and found him to be a gentleman in every way.

Cross-int 7. You are a friend of his, are you not?

Ans. Of course. I have known Mr. Racey for eleven years; I am a friend of his, and I don't think I could be a friend of any one for such a length of time if he was not a gentleman in every respect.

Cross-int. 8. Have you bought fish of him?

Ans. I never did.

Cross-int. 9. Have you bought any goods of him?

637 Ans. I have not.

Cross-int. 10. Has he bought goods of you?

Ans. Yes, once in a while.

Cross-int. 11. During what period of time?

Ans. Different times.

Cross-int. 12. During the past eleven years?

Ans. Well, yes.

Cross-int. 13. Has he bought goods of you during the present year?

Ans. Very little.

Cross-int. 14. Is there any account between you?

Ans. Yes; a small account. It don't amount to anything, though.

Cross-int. 15. Is he an associate of yours?

Ans. We meet very seldom, not frequently.

Cross-int. 16. Have you talked over his reputation for truth and veracity with any person? If yea, with whom, and how many times?

Ans. No, sir; I had no occasion to do so, because I know his reputation to be a good one.

Cross-int. 17. Who have you heard speak of his reputation for truth and veracity?

Ans. A great number of men who know Mr. Racey.

Cross-int. 18. Please give their names.

Ans. Charles Levin, Edward Lindemann, Louis Wolf, and some others whose names I do not recall at present.

Cross-int. 19. You say Mr. Racey's general reputation for truth and veracity is good. Will you please state what you understand by the words "general reputation for truth and veracity?"

Ans. If a man is upright and honest, strict in business, harms nobody, and a gentleman in every respect, I think that his truth and veracity ought not to be doubted.

Cross-int. 20. Do you know anything about Mr. Racey's business conduct, or his acts and doings, beyond what you learned in the course of his dealings in trade with you?

Ans. I know generally, so far as I can learn, that those who deal with him are satisfied.

638 Cross-int. 21. Who is Charles Levin, and what is his business, and where is his place of business?

Ans. He is an importer, at 51 Beaver street.

Cross-int. 22. When did you hear him say anything relative to Mr. Racey's character for truth and veracity?

Ans. I heard him speak different times very highly of Mr. Racey's character.

Cross-int. 23. Character in what respect?

Ans. He considered him a perfect gentleman, the same as I do.

Cross-int. 24. Please state what he said at any one time.

Ans. I could not state anything particular. He said he considered him a perfect gentleman in every way. This conversation was casual between me and Mr. Levin.

Cross-int. 25. Was that all that he said?

Ans. Yes, sir; as far as I recollect.

Cross-int. 26. How many times did he say that?

Ans. I did not count them. It was a good many times.

Cross-int. 27. Did he say it to you each time?

Ans. Yes, sir.

Cross-int. 28. How came he to say it?

Ans. As I remarked before, it happened casually.

Cross-int. 29. Do you mean to say that whenever you casually met he said to you, "Mr. Racey is a perfect gentleman?"

Ans. Yes, sir; very often.

Cross-int. 30. How came he to say it to you more than once?

Ans. That is more than I can tell.

Cross-int. 31. You did not deny it, did you?

Ans. No; he made that remark several times.

Cross-int. 32. Well, if you did not deny it, but coincided with him, why did he keep making that remark to you?

Ans. Because, I think, he found out more and more that Mr. Racey was a perfect gentleman. So he was at liberty to make the remark as often as he felt like it.

Cross-int. 33. So, then, every time he found out something additional in favor of Mr. Racey he came and told you of it?

(Objected to, as it assumes a state of facts which the witness
639 has not stated, the witness having merely given his opinion as to why the party spoke to the witness more than once about Mr. Racey, and the question unfairly assumes the statement of that opinion to be a statement of fact.)

Ans. Well, I did not say that.

Cross-int. 34. I ask you if he did.

(Question objected to, as it assumes that the witness knew all the information received by the party referred to, whether communicated to the witness or not, which it would be impossible for the witness to know.)

Ans. He merely repeated his remark at different times.

Cross-int. 35. Were you and he, or either of you, during the period covered by these different times, investigating Mr. Racey's character for truth and veracity, or for gentlemanly conduct?

Ans. I never had reason to make investigation particularly, because if one knows another for eleven years he ought to be able to judge correctly of his character.

Cross-int. 36. What is Edward Lindemann's business, and where is his place of business?

Ans. 549 Broadway. He is in the cigar business.

Cross-int. 37. When have you heard him speak of Mr. Racey's character for truth and veracity, and how many times?

Ans. Different times. I do not know how many times.

Cross-int. 38. What did you hear him say at any one time relative to Mr. Racey's character for truth and veracity?

Ans. I heard him say the same as I told you before. I heard him speak very highly of Mr. Racey in every respect.

Cross-int. 39. Please give the words he used, as near as you can.

Ans. Well, I don't recollect any words particular.

Cross-int. 40. Can you not give any of his language?

Ans. No; I cannot recollect it.

Cross-int. 41. What occasion had he to speak to you about Mr. Racey?

Ans. I don't think he had any particular occasion.

640 Cross-int. 42. Was Mr. Racey's truthfulness called in question at the time by any one?

Ans. No, sir; it never was.

Cross int. 43. How happened he, then, to speak of it to you?

Ans. I suppose it happened in the course of conversation about different people.

Cross-int. 44. Did he always say the same thing about Mr. Racey?

Ans. As far as I recollect; yes.

Cross-int. 43. Did he not say Mr. Racey was a gentleman, or a perfect gentleman?

Ans. Yes; he made that remark.

Cross-int. 44. What else did he say besides that?

Ans. I don't recollect the words, except what I said before.

Cross-int. 45. What is Mr. Louis Wolf's business, and where is his place of business?

Ans. Somewhere in Chambers st.; I am not sure. He is in the fancy-goods business.

Cross-int. 46. When have you heard him speak of Mr. Racey's character for truth and veracity, and how many times?

Ans. I don't remember how many times. My statement in regard to Mr. Lindemann would apply to Mr. Wolf.

Cross-int. 47. Mr. Wolf, then, said Mr. Racey was a perfect gentleman, did he not?

Ans. Yes, sir.

Cross-int. 48. Do you remember his saying anything else?

Ans. I do not.

Cross-int. 49. How many times did he say that to you? State as near as you can.

Ans. I do not recollect; several times when we met and spoke of our acquaintances.

Cross-int. 50. But you never disputed it to him, did you?

Ans. No; I never had occasion to do so.

Cross-int. 51. Why did he keep telling you Mr. Racey was a perfect gentleman if you did not deny it?

641 Ans. If you meet together among friends and acquaintances, of course you might get an additional proof to confirm this opinion.

Cross-int. 52. You say you are a merchant; what goods do you deal in?

Ans. Gentlemen's furnishing goods.

Cross-int. 53. Racey buys his shirts of you?

Ans. Occasionally he has.

Cross-int. 54. Do you pretend to know all Mr. Racey's acquaintances and business associates?

Ans. No; I do not.

JACOB MICHÆLIS.

Deposition of Joseph Murphy, taken, subscribed, and sworn to, before Kenneth G. White, examiner.

JOSEPH MURPHY being called as a witness on the part of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Joseph Murphy; my age is fifty-two; I reside at 167 Elm street, New York City; I am a landscape gardener, formerly superintendent of all the public parks in the city.

Int. 2. Were you at any time connected with the Centre Market? If so, how long?

Ans. Yes; four years and four months, or more, as deputy collector of city revenue. That was one of the markets I had charge of.

Int. 3. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market; and if yea, how long have you known him?

Ans. Yes, I have known him for upwards of twenty years.

Int. 4. Do you know his general reputation for truth and veracity?

642 Ans. Yes, sir.

Int. 5. What is it?

Ans. Good.

Cross-examined:

Cross-int. 6. You are a friend of Mr. Racey's, are you not?

Ans. I am, so far as having respectable feelings towards him.

Cross-int. 7. Are you an associate of his?

Ans. Not particularly so. I deal at his stand sometimes.

Cross-int. 8. How long have you dealt with him at his stand?

Ans. Possibly ten years, off and on, perhaps more, but ten years certainly.

Cross-int. 9. What dealings have you had with him?

Ans. In his line business.

Cross-int. 10. That is, you bought fish and game of him?

Ans. I bought fish and poultry of him.

Cross-int. 11. Have you had any other dealings with him?

Ans. Well, he has dealt with me in my line of business; I have had no other dealings with him

Cross-int. 12. Are you dealing with him at the present time?

Ans. Yes, sir.

Cross-int. 13. Is there an open account between you?

Ans. Yes, sir; I might say that it does not extend over a month, sometimes not even that.

Cross-int. 14. Have you bought goods of him pretty regularly?

Ans. Yes; once or twice a week possibly. All my fish trade he has, which is generally on Fridays.

Cross-int. 15. To what extent does he employ you in your business?

Ans. Well, sir, very limited. Once or twice I have fixed his garden, and planted trees for him.

Cross-int. 16. What do you understand by the words "general reputation for truth and veracity?"

Ans. As far as I have had dealings with him I have always found him to be a candid, upright man, and, in the absence of any other knowledge, considered him an honest one.

643 Cross int. 17. Is that all the answer you have to the question?

Ans. There is none other that I know of that I can answer more to the point than that.

Cross-int. 18. You mean, then, that in all your dealings with him he has dealt fairly and honestly with you, and you have had no difficulty with him in any way?

Ans. Yes, sir. I have had no difficulty with him.

Cross-int. 19. And that is all you know about his general reputation for truth and veracity?

Ans. Yes, sir.

Cross-int. 20. Have you had any talk with any person or persons about this particular matter of the character of Mr. Racey for truth and veracity?

Ans. No, sir.

Redirect:

Int. 21. Have you heard any one speak of his character for truth, or ever heard it discussed by others?

(Objected to as incompetent.)

Ans. I have not, sir, in any way that I could charge my memory with. [I always heard him spoken of respectfully, as my connection with the market brought me a good deal in contact with the people. I used to go there to collect rents, and they always spoke well of him.]

(All the portion of the answer in brackets objected to as not responsive to the question, and incompetent.)

JOSEPH MURPHY.

644 *Deposition of Cortland Schuyler, taken, subscribed, and sworn to before Kenneth G. White, examiner.*

CORTLAND SCHUYLER, being called as a witness on the part of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Cortland Schuyler, my age is forty-eight; I reside at 393 Broome street, New York City; I keep a stand in the Centre Market.

Int. 2. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market, New York City? If yea, how long have you known him?

Ans. Yes, I have known him between nine and ten years.

Int. 3. Do you know his general reputation for truth and veracity?

Ans. Yes, sir.

Int. 4. What is it?

Ans. Good.

Cross-examined:

Cross-int. 5. What have you had to do with Mr. Racey during the time you have known him?

Ans. We have had some dealings in the way of trade. He has dealt with me, and I have dealt with him.

Cross-int. 6. Have those dealings continued during the whole period you have known him?

Ans. Yes, more or less, during the whole time I have known him.

Cross-int. 7. What goods do you deal in?

Ans. Country produce generally; in the fall of the year, poultry, butter, and eggs.

Cross-int. 8. And your dealings with him have been that he has bought goods of you and you bought goods of him?

645 Ans. Yes.

Cross-int. 9. Are you dealing together at the present time?

Ans. Yes, sir, more or less.

Cross-int. 10. Have you an open account together?

Ans. Yes, there is an open account.

Cross-int. 11. Do you get most of your family supplies from him of the articles he deals in?

Ans. Well, I should say not more of him than of others in the same business.

Cross-int. 12. Do you mean as much of him as of all others together?

Ans. No.

Cross-int. 13. About what proportion do you get of him?

Ans. I get about one-third of Mr. Racey, as near as I can guess. There are three fish-dealers in the market.

Cross-int. 14. What extent does he buy of you and how often?

Ans. Well, I can't exactly say; it is not large; sometimes more and sometimes less.

Cross-int. 15. Have you had any other dealings with him except those you have mentioned?

Ans. We bought a stand together, which we divided. He wanted part and I wanted part. It was an adjoining stand.

Cross-int. 16. When was that?

Ans. I think it was last February—1869.

Cross-int. 17. Is that all the dealings you have had together?

Ans. That is all, sir, except our usual purchases daily.

Cross-int. 18. You are a particular friend of his, are you not?

Ans. I have known Mr. Racey for eight or nine years. There was no more friendship between us except being together in the market, in the way of business. He never called at my house nor I at his.

Cross-int. 19. You are not an associate of his, then, except in your business?

Ans. No, sir, I believe not. We hardly ever see one another except in the market.

Cross-int. 20. How near is your stand to his?

646 Ans. It is nearly opposite, a little one side.

Cross-int. 21. How long have you occupied that stand?

Ans. I think the stand I am now in about five years.

Cross-int. 22. Where was your place of business before that?

Ans. It was further to the north of the market, nearer the entrance.

Cross-int. 23. How long were you there?

Ans. I occupied two stands before I occupied the present one in the space of four years; I can't tell what time was divided between each.

Cross-int. 24. In what year did you first engage in business in that market?

Ans. I could not answer that exactly without reference to my books. It is either nine or ten years last fall, one or the other, I can't say which.

Cross-int. 25. Did you engage then in the same kind of business that you are now engaged in?

Ans. Yes.

Cross-int. 26. What business were you engaged in before you entered the market?

Ans. I was clerk in a store, nearly opposite the market, in Broome street.

Cross-int. 27. About how many people are engaged in business in that market at the present time?

Ans. I could not tell that. There are something over one hundred stands in the market at present.

Cross-int. 28. What do you understand by the words "general reputation for truth and veracity" as applied to a person?

Ans. Well, I should consider a man a good, fair, square dealer, and his word as good as what he says.

Cross-int. 29. You have talked over the matter of Mr. Racey's character for truth and veracity somewhat, have you not?

Ans. No, sir; I don't know that I ever talked it over with anybody.

Cross-int. 30. Have you not heard people speak of it?

Ans. I don't remember that I ever heard that question brought

647 up. I have heard people commend his character as a fair, square-dealing man.

Cross-int. 31. Have you heard any one speak of his truthfulness?

Ans. I never heard that questioned.

Cross-int. 32. Have you ever heard any one speak of it at all in any way?

Ans. No, sir; I believe not. I cannot bring it to mind if they did.

Cross-int. 33. You say you have heard people speak of him as a fair, square-dealing man. Have you not also heard people speak against him?

Ans. I can't say as to that, sir. There are so many little trifling things said in the market that it is hard to remember them all.

Cross-int. 34. Don't you remember of some difficulties of his about the personal property at his stands some years ago—between 1860 and 1864?

Ans. I remember something of that kind, although I was not conversant with it much.

Cross-int. 35. Did you know the nature of the difficulty?

Ans. I did not, except from what I heard. Personally I know nothing of it.

Cross-int. 36. Did you learn the nature of it by hearsay?

(Question objected to.)

Ans. There was a report, but I do not know how true it was. I know nothing about it.

Cross-int. 37. You had no interest whatever in Mr. Racey's difficulties, troubles, or business.

(Objected to as immaterial and irrelevant.)

Ans. No, sir.

Cross-int. 38. Did you learn of his putting his property out of his hands about the time you entered the market or soon after?

(Objected to for the same reason as stated in objection to previous question, and as calling for hearsay testimony in reference to matter not opened in the direct examination.)

648 Ans. I heard a report of it, but I do not know whether it was true or not.

Cross-int. 39. Did you not learn or know of his being insolvent during some portion of the time since you went to the market?

(Same objection as before.)

Ans. Nothing more than a report. I knew nothing of it personally.

Cross-int. 40. If you heard, then, nothing said by any one about Mr. Racey's character for truth and veracity, will you please state how you are enabled to say that you know his general reputation for truth and veracity, and that it is good?

Ans. By the dealings I have had with him and business connection.

CORTLAND SCHUYLER.

Adjourned to July 22, 1869.

Deposition of Willett P. Whitson, taken, subscribed, and sworn to, before Kenneth G. White, examiner.

JULY 22, 1869.

Present, counsel on both sides.

WILLET P. WHITSON, sworn as a witness on part of defendants, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Willett P. Whitson; age fifty-one years; residence 26 Duffield st., Brooklyn; occupation, butcher; connected with the firm of A. & E. Robbins.

Int. 2. Have you at any time made any experiments for procuring artificial congelation of animal substances, or preserving them by artificially freezing?

649

Ans. I have.

Int. 3. Please state what your first experiment was, as nearly as you can.

(Objected to generally, but especially as incompetent at this stage of the evidence in the case.)

Ans. My first was in an ice-box by using zinc, by using zinc trough; I made a trough out of zinc. The following is the drawing of the appearance of the box when opened at the top:

(a) 6 *in. deep.*	6 *in. wide.*
(b)	

"*a*" shows the metallic pan six inches deep, it being, however, wider at the top than at the bottom, tapering a little. "*b*" shows the pre-

serving-chamber. The pan "*a*" was tacked to the back side of the box, and the ends tacked to the sides. On the front there was a strip of wood about an inch square running from one end of the box to the other, to which the front end of the pan was tacked. The pan "*a*" was covered with a wooden lid, which shut down inside of the pan "*a*;" the preserving-chamber "*b*" was covered with two lids running from the front part of the freezing-chamber to the front part of the box. These were all covered with a large lid covering the whole box. The original size of the box was six feet long, and I think about two feet nine inches or two feet six inches high.

Int. 4. After this arrangement had been completed by you, to what, if any, use did you put the box at first? State how you used it; what, if any, mixture you used in it?

(Objected as before.)

Ans. At first I used it for the purpose of preserving birds and game. I used it by putting salt and ice in the pan "*a*," and the game in the box, or preserving-chamber, "*b*."

Int. 5. When the lids were shut over pan "*a*" and over the pre-
650 serving-chamber "*b*," was there any contact between the air in the chamber "*b*" and salt and ice in the pan "*a*" when the apparatus was in operation?

(Objection continued.)

Ans. It was intended that there should be no connection between the two, and I made it as tight as I could with the materials that I used.

Int. 6. When the pan "*a*" was filled with salt and ice, what would be the temperature of the air in chamber "*b*?"

(Same objection.)

Ans. I cannot tell; never put a thermometer in it; but it was below freezing, as I put in a pan and froze it.

Int. 7. Did you ever freeze anything else in that chamber "*b*?"

(Objection continued.)

Ans. Woodcock, sweet-breads, and other things.

Int. 8. Were the sweet-breads and woodcock frozen when they were put in, or artificially frozen after they were put in?

(Objection continued.)

Ans. They were not frozen when put in, but were artificially frozen after they were put in.

Int. 9. How long did you continue to use the apparatus you have described?

(Objection continued.)

Ans. It might have been two or three months, or longer.

Int. 10. Who, if any one, suggested to you the plan or the idea?

(Objection continued.)

Ans. I don't know as any one did. I looked at the idea of an ice-cream freezer, and did not see why it could not be applied to other things. I have used ice and salt for twenty years, not in that way, but for other purposes.

Int. 11. Are you enabled to give the time when you first used this apparatus you have described?

(Objection continued.)

Ans. I can't remember.

651 Int. 12. After you had built and used the apparatus you have above described, did you project and superintend the building of another?

(Objection continued.)

Ans. I did.

Int. 13. Where was the first one placed and used?

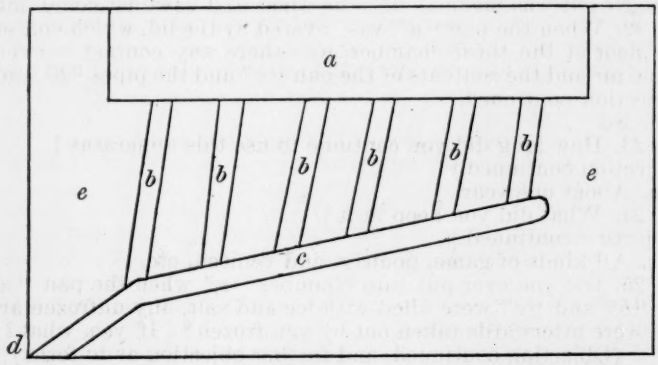
(Objection continued.)

Ans. In the store, 135 Beekman street, N. Y., I think.

Int. 14. Please describe the second apparatus, which you say you projected and superintended building, giving its dimensions, of what it was composed externally, thickness of the walls, of what they were composed, how entered, internal arrangement, of what it was constructed internally, and where it was placed.

(Objection continued.)

Ans. The room was about ten feet wide and twenty feet long; about eight feet high; the outside walls on three sides were brick, and one side there were two wooden ceilings filled with saw-dust, about four inches space between; the inside of the brick wall was sealed up with wood and a space of about three inches between the brick and wooden ceiling filled with saw-dust; the top and bottom there were two ceilings filled in with saw-dust, making the bottom, that is, the filling, about four inches thick, and the top about a foot thick; you entered the room by a large door in the front ceiling; the door was of the same thickness of the partition; the space filled by saw-dust. The door was bevelling all around; one or two jogs on the bevel for the purpose of keeping the air from passing into the room either way when closed. On the inside there was a large galvanized-iron tank, placed in the back side and attached to the upper ceiling of the room; in size, it was fourteen feet long and two feet nine inches on the bottom; two foot on the front side and two foot six inches on the back side; it was set into a wooden frame, made fast to the upper ceiling of the room, and from the bottom of the tank there was six or seven pipes extending on one end about two foot and a half, I think, and the other end of the pan I should think they were about four feet; those pipes entered into another pipe running along the back side of the ceiling into which those pipes emptied; the lower pipe was fixed at a descent so as to carry off the
652 drainage. The following presents a front end of the internal arrangement:



"*a*" is the pan, "*b*" the descending pipe, "*c*" the incline pipe, into which the pipes "*b*" entered at the bottom; "*e*" the preserving-chamber; at the point "*d*" there was an elbow from which a pipe ran ten feet on the side of the room, passed through the floor down into the cellar; there it entered into the sewer; the pipes were constructed of galvan-

ized iron; we filled the pan "*a*" from the third floor; keep it tight by means of a lid, the thickness of the upper, filled in with saw-dust the same as the ceiling; the freezing-chamber was on the second floor of the building, 135 Beekman street.

Int. 15. When using this apparatus, what did you place in the pan and pipes?

(Objection continued.)

Ans. Ground ice mixed with salt.

Int. 16. When the pan and pipes were filled with ice and salt, what was the temperature in the preserving-chamber?

(Objection continued.)

Ans. It ranged from 25° to 32°.

Int. 17. Did you ever know anything to be frozen in that preserving-chamber?

(Objection continued.)

Ans. All kinds of poultry and game, and strawberries.

653 Int. 18. When the pan "*a*" and pipe "*b*" were filled with ice and salt, was there any contact between the chamber "*e*" and the contents of the pan and pipes?

(Objection continued.)

Ans. No, there was not; the joints were calked with oakum as tight as I could make them.

Int. 19. Were there any openings in the pan "*a*" and pipes "*b*" and "*c*" into the chamber "*e*"?

(Objection continued.)

Ans. No, sir.

Int. 20. How were the pipes "*b*" and "*c*" connected?

(Objection continued.)

Ans. They set into collars fastened on to the pipe "*c*," and they were the same at the pan, so that I could take them apart at any time and wash them out.

Int. 21. When the door to the room was closed, was there any contact between the air of the chamber "*e*" and the external air?

(Objection continued.)

Ans. No; it was made as tight as wood and sawdust could make it.

Int. 22. When the pan "*a*" was covered by the lid, which you say was in the floor of the third chamber, was there any contact between the external air and the contents of the pan "*a*" and the pipes "*b*" and "*c*"?

(Objection continued.)

Ans. No.

Int. 23. How long did you continue to use this apparatus?

(Objection continued.)

Ans. About one year.

Int. 24. What did you keep in it?

(Objection continued.)

Ans. All kinds of game, poultry, and venison, etc.

Int. 25. Did you ever put into chamber "*e*," when the pan "*a*" and pipes "*b*" and "*c*" were filled with ice and salt, any unfrozen articles, which were afterwards taken out by you frozen? If yea, what?

(Objection continued, and further objection as to form.)

654 Ans. I did; all the articles mentioned in the previous answer.

Int. 26. At what seasons of the year could you reduce the temperature in chamber "*e*" below the freezing-point?

(Objection continued.)

Ans. In the months of August, July, September; summer months and winter months also.

Int. 27. Was there any difference in the size of the pipes "*b*" at the top and bottom?

(Objection continued.)

Ans. They were equal size top and bottom.

Int. 28. From whom, if any one, did you obtain the idea of the form and arrangement of the apparatus you last described?

(Objection continued.)

Ans. From no one but myself. I had never seen or heard of anything of the kind; I suggested it to Mr. Robbins, and he authorized me to build it.

Int. 29. Do you remember the time when the apparatus now used by Middleton, Carman & Co. was built?

(Objection continued.)

Ans. I recollect the building of it, but I can't state the year; either 1860 or 1861, I think; I am not positive.

Int. 30. At the time the apparatus last referred to was being built, had you or not completed and used either one of the two apparatuses you have heretofore described? If yea, how long before had each been completed?

(Objection continued.)

Ans. They had both been completed and used; the first one a year or a year and a half. I am not positive as to the time. I used it about six months; then came winter, when we did not need it. Well, I should think that I used the last one about a month before they commenced building theirs. I cannot be positive as to the time; it might have been two, three, four, or six weeks; it was from nine to ten years ago. Mr. Piper was there when I first filled the house with salt and ice.

Int. 31. Did you have any conversation with Mr. Enoch Piper in regard to the building of the apparatus now used by Middleton,
655 Carman & Co., and if so, whether it was before or after you had used your last-described apparatus?

(Objection continued, and still further objected to, because no foundation has been laid for putting the question.)

Ans. I did, after I had built my last apparatus. I was introduced to Mr. Piper while I was building it.

Int. 32. Will you state what, if anything, was said by you to Mr. Enoch Piper in regard to the building of the apparatus now used by Middleton, Carman & Co., and the formation of the pipes to be put in it, and what reply, if any, he made?

(Objection continued, on all the grounds previously stated.)

Ans. After seeing the working of those straight pipes in my apparatus, it did not fill well at the top, and I thought that a cone-shaped pipe would be more effectual, and give me more iron, and throw out more cold in the freezing-chamber. That is what I said to Mr. Piper, as near as I can recollect. I cannot say as he made any reply.

Int. 33. How was this conversation between yourself and Mr. Piper commenced; what occasioned it? State fully all that you recollect of it and about it.

(Objection continued.)

Ans. When we were in mine, that is A. & E. Robbins' ice-house, watching the working of the mixture in the tanks and pipes, I do not remember anything but general conversation for the improvement of those tanks and pipes.

Int. 34. Was anything said by you in that conversation with Mr. Piper about changing or altering the shape of any of the pipes which were to

go into the apparatus now used by Middleton, Carman & Co.? If yea, what did you say to him?

(Objection continued.)

Ans. I think I did, and suggested cone shapes as preferable to straight pipes.

Int. 35. Did you give any reason for preferring cone-shaped pipes to straight ones? If so, what reason did you give?

(Objection continued.)

656 Ans. I did. The ice at the bottom of the pipes, occupying a small space, would melt away so that it would keep the top of the pipes constantly filled.

Int. 36. Did you make any suggestion to him as to the manner in which the cone-shaped pipes should be placed, with reference to the smaller part being at the top or bottom?

(Objection continued.)

Ans. Yes, the large part at the top.

Int. 37. Have you ever seen the inside of the apparatus now used by Middleton, Carman & Co.?

(Objection continued.)

Ans. I have.

Int. 38. Where is it situated?

(Objection continued.)

Ans. 137 Beekman street, New York.

Int. 39. Is there any difference in the shape of the perpendicalar pipe of that apparatus of Middleton, Carman & Co.?

(Objection continued.)

Ans. There is.

Int. 40. What is it?

(Objection continued.)

Ans. They have two rooms; one has straight perpendicular pipes same size at the top as at the bottom, as near as my eye can tell. The other I should think were about a foot at the top in diameter, and I should think about four inches at the bottom.

Int. 41. At any time has Mr. Enoch Piper said anything to you about putting his plate or patent-mark on your apparatus?

(Objection continued.)

Ans. I saw a letter to Mr. Robbins. I don't think that I am right. I think that Mr. Robbins told me that he had a letter to that effect.

(Answer objected to, as not responsive to the question, and as stating the substance of a written document not produced or accounted for, and for being hearsay.)

Int. 42. Did you ever put any such plate or mark on your apparatus?

(Objection continued.)

Ans. No.

657 Cross-examination:

Without waiving any objection to the testimony of the witness heretofore given, or any part of it.

Cross-int. 43. How are you connected with the firm of A. and E. Robbins, and how long have you been connected with them?

Ans. I am connected with them as salesman, laborer, anything to promote the interest of the business. I have been with them about twenty-one years, being sick for one year that I did not do any business for the firm.

Cross-int. 44. What year was that?

Ans. That must have been seventeen years ago.

Cross-int. 45. Where did you construct the apparatus first described by you?

Ans. It was formerly an old common ice-box, and I put this up in the store-house at 135 Beekman street. That is the number by which I always knew the house.

Cross-int. 46. Was that ice-box in use at that store-house at the time you commenced to alter it, as stated?

Ans. Not at that particular time.

Cross-int. 47. Where was it?

Ans. Standing in the same place, but not in use.

Cross-int. 48. How long had it been there?

Ans. It might have been there ten years; it might have been there five years; I can't tell which. It has been there ever since he leased the store.

Cross-int. 49. How long had it been out of use?

Ans. It might have been a month, it might have been two days; I can't say.

Cross-int. 50. Who requested you to alter it for the purpose of experiment?

Ans. No one. I asked Mr. Robbins if he would let me have the ice-box to experiment upon. He let me have it.

658 Cross-int. 51. Did you tell him for what purpose you wanted to experiment upon it?

Ans. I did.

Cross-int. 52. What was your purpose?

Ans. For the purpose of making cold air in the chamber, where poultry and game could be kept dry without mixing them in with the ice.

Cross-int. 53. Will you state the date of that, as near as you can?

Ans. Well, I think it was between '60 and '61, as near as I can recollect.

Cross-int. 54. Did you make the alterations personally?

Ans. I did.

Cross-int. 55. Did you make the pan to it yourself?

Ans. No, not the pan.

Cross-int. 56. Did you do any of the metal-work yourself?

Ans. No, not the metal-work.

Cross-int. 57. Who did?

Ans. I am not sure whether Meyer did it, or the little man in the basement, second door from our store, in Beekman street.

Cross-int. 58. Is the little man there still?

Ans. I think he is not there. Another man occupies his place, and is in the same business—tinman. I never knew what the little man's name was.

Cross-int. 59. Did you ever employ the little man before or since?

Ans. Not as I know of.

Cross-int. 60. What is Mr. Meyer's full name, and where does he keep?

Ans. I don't know.

Cross-int. 61. Where was his place of business then?

Ans. Second door from Beekman street, in Warren.

Cross-int. 62. How are you enabled to fix the date as being between 1860 and 1861?

Ans. By the beginning of the war; one of our men went to the war at the time.

659 Cross-int. 63. What was his name?

Ans. Minot Robbins.

Cross-int. 64. What regiment did he go in?

Ans. The 13th regiment, of Brooklyn.

Cross-int. 65. Do you recollect the name of the colonel in command of the regiment?

Ans. No, sir.

Cross-int. 66. For what length of time did he enlist?

Ans. He went out in the State militia for thirty days or three months, I am not certain which.

Cross-int. 67. In what season of the year did you make these alterations in the old ice-box?

Ans. I think it was in the month of August; I am not certain.

Cross-int. 68. What makes you think it was in the month of August?

Ans. Well, I think it was in the month of August, previous to Minot's going to the war.

Cross-int. 69. What month did he go to the war?

Ans. I don't know what month it was. It was the first call of the militia to go to defend Washington.

Cross-int. 70. Is the fact of Minot's going to the war the only means you have of fixing the date of your making the alterations in the ice-box?

Ans. No; being in the woodcock season.

Cross-int. 71. Have you any other means of fixing the date?

Ans. None.

Cross-int. 72. What is the woodcock season?

Ans. From the 4th day of July to the 1st day of January.

Cross-int. 73. Might not, then, these alterations in the ice-box have been made by you at any time between the 4th day of July and 1st day of January?

Ans. They might; but I should not have made it much later than that, for we don't use them for that purpose in the winter.

Cross-int. 74. How long were you experimenting upon the ice-box?

660 Ans. Well, I think I experimented about six months upon that box.

Cross-int. 75. What did you first put into it after it was altered by you?

Ans. Water and sweet-breads.

Cross-int. 76. What next did you put in?

Ans. Poultry and game of different varieties.

Cross-int. 77. Did you put in any woodcock immediately?

Ans. I presume I did.

Cross-int. 78. Are you able to state from memory that you put in any woodcock in the year 1861?

(Question objected to, as it assumes a fact which the witness has negtived, that he used this apparatus in 1861.)

Ans. This apparatus was in the fall of 1860, previous to 1861, and it was in the fall of 1860 that I experimented upon it.

Cross-int. 79. In what season of the year did Minot go to the war?

Ans. In spring.

Cross-int. 80. Of what year?

Ans. I think it was '61.

Cross-int. 81. How does the fact of Minot going to the war in 1861 enable you to say that you commenced experimenting upon that ice-box the previous August?

Ans. Because I built another one the following spring, and he was gone to the war while I was building the following one.

Cross-int. 82. How long had he been gone to the war when you commenced building the second apparatus?

Ans. I think he went away about the time I begun to build it.

Cross-int. 83. What makes you remember that he went away about the time you began it? What connection is there between the two events?

Ans. Nothing in particular. My memory serves me in that direction.

Cross-int. 84. Are you sure he was not there when you were building the second apparatus described by you?

661 (Objected to as being uncertain as to what is intended by the word "there," whether at the war or at home.)

Ans. He was not at the market when it was finished. He was at the war. I do not know whether or not he was there when I commenced to build it.

Cross-int. 85. Why cannot you remember as well whether or not he was there when you commenced building the second apparatus as you can the fact that he was not at the market when you finished it?

Ans. Because I was anxious to show him the working of it.

Cross-int. 86. Did you show the working of it to the other employés of your firm?

Ans. They had full access to it to show themselves.

Cross-int. 87. Did you show it to anybody?

Ans. To anybody who asked to see it after it was built.

Cross-int. 88. Did many ask to see it?

Ans. Yes.

Cross-int. 89. Did you show it to Joseph H. Racey, jr.?

Ans. I did not show it to him. Some of our men might.

Cross-int. 90. Was it generally known about the market?

Ans. Yes, sir.

Cross-int. 91. Did your firm trade with Joseph H. Racey, jr., at that time?

Ans. I could not say.

Cross-int. 92. Do you remember his being there at the place of business of your firm, or at the store-house where the second apparatus was, at any time?

Ans. I did not know Joseph H. Racey at the time personally. I have only known him personally about two years. I had heard of him before. I have never seen him at the store-house, nor at the stand, previous to two years ago. Before that he might have been there a thousand times without my knowledge. He fetches stuff to the store-house, and I go over to receive it, and we send up and buy stuff of him, and he buys of us. I only remember having received stuff at the store-house but once from Mr. Racey.

662 Cross-int. 93. How long ago was the time that you received stuff from Mr. Racey at your store-house? State as near as you can.

Ans. I could not state within six months. I think it was during 1869.

Cross-int. 94. Now, during the first six months that you were experimenting on this old ice box mentioned by you, will you swear that you froze any woodcock in it, or put any woodcock in it to be frozen?

Ans. Yes.

Cross-int. 95. How long after you commenced your experiments?

Ans. I could not be particular to date.

Cross-int. 96. About how long?

Ans. It might have been five days, it might have been a month and a half.

Cross-int. 97. Were the first that you put in frozen in it?

Ans. I am not certain whether they were frozen or not. I could not say whether they had had time to freeze before being taken out, but I had them frozen during the six months I was experimenting on the box.

Cross-int. 98. What did you do with those that you froze?

Ans. Sold them.

Cross-int. 99. To whom did you sell them? Give the names of the parties.

Ans. I could not say.

Cross-int. 100. Did you sell them in a frozen state?

Ans. They were sold in a frozen state.

Cross-int. 101. Had you met with any frozen woodcock in the warm season of the year before you froze yours, as stated?

Ans. No.

Cross-int. 102. Had you met with any frozen game of any kind in the warm season of the year in markets prior to the frozen woodcock you speak of?

Ans. No.

Cross-int. 103. Had you met with any frozen fish in the warm
663 season of the year, or out of the season of their catch, in the markets prior to your freezing the woodcock, as stated?

Ans. Not to my knowledge.

Cross-int. 104. Had you not seen frozen salmon in the fall and winter seasons before then?

Ans. Not to my recollection.

Cross-int. 105. How near is the stand of your firm in Fulton Market to the stand of Middleton, Carman & Co., formerly the stand of William M. Rogers & Co.?

Ans. There are about fifty or one hundred feet between the two.

Cross-int. 106. How long have you known the last-named stand?

Ans. Ever since they have been there in business as the firm of Middleton & Carman. I have known that stand ever since it was first occupied by Maxwell Rogers, from fifteen to twenty years ago, and by William M. Rogers & Co., and Middleton, Carman & Co.

Cross-int. 107. How often do you see the last-named stand, and how often have you seen it during the last ten years?

Ans. Some days not at all, some days a dozen times, more or less, as my business calls me there.

Cross-int. 108. Do you not usually pass it in going from the stand of your firm to the store-house of your firm?

Ans. Sometimes I do; sometimes I do not. I usually do.

Cross-int. 109. You have known during the past ten years, have you not, what kinds of fish have been exposed for sale upon the stand now occupied by Middleton, Carman & Co.?

Ans. I could not say as to what particular kind. They have all varieties. I could not call them a name myself.

Cross-int. 110. Don't yot know of salmon being exposed for sale on that stand?

Ans. I do in the seasons of the year, and within the last two or three years I have seen them there all through the year. It might have been longer.

Cross-int. 111. Have you not known of salmon being sold and exposed for sale on that stand ever since it was occupied by Maxwell Rogers?

664 Ans. In certain seasons of the year, fresh salmon, not frozen.

Cross-int. 112. Have you not known of frozen salmon being exposed for sale on that stand; and, if yea, how long?

Ans. Not previous to their having an ice-house; that is, within the past eight or nine years.

Cross-int. 113. Are you willing to swear that frozen salmon were not exposed for sale on that stand prior to the building of the ice-house or apparatus you have named as now belonging to Middleton, Carman, & Co.?

Ans. I could not say. They might have sold thousands of frozen salmon without my knowledge, as I was not in their employ and did not meddle with their business.

Cross-int. 114. Do you mean to say that thousands of frozen salmon could have been sold off their stand prior to the building of their ice-house you have named, and you not know of it?

Ans. I do.

Cross-int. 115. Would you not have heard of it?

Ans. Not if they see fit to keep it a secret.

Cross-int. 116. If they had not seen fit to keep it a secret, would you have heard of it?

Ans. No, sir. I have no means of prying into their business.

Cross-int. 117. If they had been selling off their stand, for two or three years prior to their building said ice-house, preserved frozen salmon, would you not have known of it or heard of it?

Ans. Not if they did not see fit to tell me.

Cross-int. 118. Was there no way by which you would have heard of it or known of it, without their telling you?

Ans. They, or some one else. I am not in the fish business. If there had been such a thing, I think I should have heard of it.

Cross-int. 119. You were well acquainted with that firm, were you not?

Ans. Yes, sir.

Cross-int. 120. You frequently stopped to talk with them as you passed their stand, did you not?

Ans. Yes.

Cross-int. 121. There was nothing to prevent your seeing what
665 fish they had on their stand when you passed or stopped there, was there?

Ans. Nothing.

Cross-int. 122. Was it a common thing at that time to have preserved frozen salmon in the market?

(Objected to as not stating what time is referred to, and as calculated to mislead the witness, and because the witness has already said he did not know of any frozen salmon being sold in the market until about the time of the building of the ice-house now used by Middleton, Carman & Co.)

Ans. It was not, previous to the ice-house. I think it was unheard of.

Cross-int. 123. You mean to say, then, upon your oath, that prior to the building of said ice-house last named, you think it was an unheard-of thing to have frozen salmon exposed to sale in Fulton Market?

(Question objected to as assuming to state a previous answer of the witness, when no such answer has been given by the witness.)

Ans. Yes.

Cross-int. 124. Did you know of the firm of W. M. Rogers & Co. hav-

ing an apparatus for freezing fish in the store-house in Beekman street prior to the building of the last-named ice-house mentioned by you?

Ans. It is always by the name of Middleton and Carman & Co. I have known the place, that is, within the last eight years, since this ice-house of which we are speaking was built. I did not know of W. M. Rogers & Co. having an apparatus for freezing fish in their store-house prior to the building of the last-named ice-house.

(Adjourned to July 23, 1869, at 9 o'clock.)

666 JULY 23, 1869.

Present, counsel for the respective parties.

Cross-int. 125. Do you know of the firm of Middleton, Carman & Co. having such an apparatus at the time inquired of?

Ans. I do.

Cross-int. 126. Did you ever see it?

Ans. I did.

Cross-int. 127. Where was it located?

Ans. Well, I cannot give you the number of the store. It was located in the store-house next door to the store-house of A. & E. Robbins.

Cross-int. 128. How many times did you see it?

Ans. I don't know what apparatus you are referring to.

Cross-int. 129. I mean the apparatus last inquired about by me.

Ans. I don't know what one it refers to.

Cross-int. 130. Did you ever see in the store-house where the ice-house, or freezer, now owned by Middleton, Carman & Co. was built and is now situated, an ice-box rigged up with a pan in the top-part to hold ice and salt, at any time?

(Objected to as not being connected with any matter inquired of in the direct examination, and, therefore, not open to complainant on cross-examination.)

Ans. I did.

Cross-int. 131. When was it?

(Objection continued.)

Ans. I could not state the particular time.

Cross-int. 132. Was it not before the building of the ice-house or freezer they now own and use in the same store?

(Objection continued.)

Ans. It was.

Cross-int. 133. How many times did you see it?

(Objection continued.)

667 Ans. I have no means of recollecting the number of times.

Cross-int. 134. Was it shown to you by any one; if so, by whom?

(Objection continued.)

Ans. By one of the men now known as one of the firm of Middleton & Carman.

Cross-int. 135. What is his name?

(Objection continued.)

Ans. I could not say which one of the firm.

Cross-int. 136. Did you ever see it when Mr. Carman was present?

(Objection continued.)

Ans. I presume I have.

Cross-int. 137. What difference did you notice in its construction and arrangement from the ice-box you rigged up as you have stated?

(Objection continued.)

Ans. I don't know that there was any difference; it was similar, the same as I had rigged up.

Cross-int. 138. When in use, were ice and salt placed in the pan at the top?

(Objection continued.)

Ans. Yes.

Cross-int. 139. What was placed in the box below the pan?

(Objection continued.)

Ans. I do not know.

Cross-int. 140. Did you never see the interior of the box?

(Objection continued.)

Ans. I could not say positively that I did.

Cross-int. 141. Will you swear that you did not?

(Objection continued.)

Ans. I have no means of recollecting about seeing the inside of the box.

Cross-int. 142. Besides yours and this one, have you ever seen any other ice-boxes rigged up in that way?

(Objection continued.)

Ans. I constructed one for Jule Johnson.

668 Cross-int. 143. When was that?

(Objection continued.)

Ans. The following summer after my experiment.

Cross-int. 144. Have you ever seen any others besides those you have mentioned?

(Objection continued.)

Ans. Yes.

Cross-int. 145. Others rigged up in the same way as yours and Middleton, Carman & Co.'s?

(Objection continued.)

Ans. Yes, similar.

Cross-int. 146. When and where?

(Objection continued.)

Ans. John Acklan's stand in the retail Fulton Fish-Market. I could not state as to the time I saw it; it was some time between 1863 and 1868.

Cross-int. 147. Did you have anything to do with rigging that up?

(Objection continued.)

Ans. I did not.

Cross-int. 148. At the time you saw the rigged-up ice-box of Middleton, Carman & Co., had you seen any other rigged in the same way, except your own?

(Objection continued.)

Ans. I had not.

Cross-int. 149. Had you at that time heard of any one having an ice-box rigged up in the same way besides yourself and Middleton, Carman & Co.?

(Objection continued.)

Ans. No.

Cross-int. 150. Had you, then, no curiosity to examine Middleton, Carman & Co.'s ice-box, to see how it was constructed, and whether it differed from yours?

(Objection continued.)

Ans. I could not say what my curiosity was at that time.

Cross-int. 151. Did you not consider your improvement or alteration

669 of the ice-box in the way you have stated a matter of some importance and value to you or your firm?

(Objection continued, and that the question does not sufficiently designate which of the ice-boxes and what improvement is designated.)

Ans. Yes.

Cross-int. 152. Would you not, then, wish to examine the ice-box of Middleton, Carman & Co., to see whether they had appropriated your improvements?

(Same objection.)

Ans. None at all.

Cross-int. 153. Had Middleton, Carman & Co. examined your first ice-box at the time their ice-box was rigged up?

(Same objection.)

Ans. I could not say.

Cross-int. 154. No objection was made to your seeing their ice-box outside and inside, was there?

(Same objection.)

Ans. I don't know that there was, and I don't know but there was.

Cross-int. 155. How long before the building of their ice-house, or freezer, was it that you saw their ice-box rigged up with a pan, as stated?

(Same objection.)

Ans. I could not state as to the time.

Cross-int. 156. Did you learn or hear what they kept in that ice-box, or what they used it for?

(Same objection.)

Ans. Preserving meats and fish of different kinds.

Cross-int. 157. Did you not know or hear that they kept frozen salmon in it at that time or thereabouts, when you saw it?

(Same objection, and also as calling for hearsay testimony.)

Ans. I know they put fish in there. I was told they put fish in there, but I did not see them put in. I don't know that I ever heard the names of any fish designated as having been put into that box by Middleton, Carman & Co.

Cross-int. 158. Did you know or hear under whose direction that box was rigged up?

670 (Objection continued.)

Ans. I think it was under the direction of a man from the State of Maine or Canada. They did not give me his name.

Cross-int. 159. What was his business, as you understood it?

(Objection continued.)

Ans. A man dealing in fish—a fisherman.

Cross-int. 160. Was it not a man dealing in salmon, more especially?

(Same objection.)

Ans. There was nothing represented to me of that kind.

Cross-int. 161. Did you not learn or hear that he was a dealer in salmon, or frozen salmon, or frozen fish?

(Same objection.)

Ans. No, not at that time; I have since.

Cross-int. 162. Have you since learned the name of that man; and, if yea, what is his name?

(Same objection.)

Ans. I have since been introduced to Mr. Enoch Piper as being the same man.

Cross-int. 163. Did you not hear that Mr. Piper had a patent apparatus of some kind for keeping or preserving fish?

(Same objection.)

Ans. At what time?

Cross-int. 164. The time we are speaking of last.

Ans. Since I have become acquainted with Mr. Enoch Piper, I have.

Cross-int. 165. Did you not hear of it before you became acquainted with Mr. Piper?

(Same objection as before.)

Ans. No.

Cross-int. 166. At the time you saw the ice-box of Middleton, Carman, & Co. rigged up with a pan, as you have stated, were you not informed, or told by them, or any one, that the apparatus was patented, or in substance that it was constructed under a patent-right?

(Same objection as before.)

Ans. No.

671 Cross-int. 167. Which ice-box was rigged up first—yours, or that of Middleton, Carman & Co.?

(Same objection as before.)

Ans. Mine was rigged up before I saw theirs.

Cross-int. 168. That is all you know about it, is it?

(Same objection.)

Ans. Yes.

Cross-int. 169. Did you see their box when they were making the alterations in it, or rigging it up?

(Same objection.)

Ans. No.

Cross-int. 170. Did you tell them, or either of them, or the person with you, when you saw their ice-box rigged with a pan, as stated, that you had an ice-box rigged up like it, or any words to that effect?

(Same objection.)

Ans. I think I did.

Cross-int. 171. Will you swear that you did?

(Same objection.)

Ans. I have no means of recollecting the discourse.

Cross-int. 172. Have you any recollection of saying anything of the kind to them, or to the party in the store with you at that time?

(Same objection.)

Ans. Only what use the box might be put to, and how much benefit it might be to us all if made effectual.

Cross-int. 173. But nothing was said to you by any one as to the use Middleton, Carman & Co. were going to make of their box?

(Same objection as before.)

Ans. I don't recollect what reply they made to me. I supposed them to use it for their own benefit.

Cross-int. 174. Did you suppose that they got the idea of their box, with its peculiar arrangement, from yours?

(The question is objected to as before.)

Ans. I have no means of knowing.

Cross-int. 175. Did you claim that they did?

672 (Same objection.)

Ans. I did not.

Cross-int. 176. Did you believe that they did?

(Same objection.)

Ans. I did not.

Cross-int. 177. When you first rigged up your ice-box, as stated, did you show it to anybody? If yea, to whom?

(Objected to as before.)

Ans. It was free for anybody to look at.

Cross-int. 178. Cannot you give the name or names of any parties to whom you first showed it, or who saw it in your presence?

(Same objection.)

Ans. I could not identify who saw it first.

Cross-int. 179. Give the names of any parties you ever showed it to.

(Same objection.)

Ans. A man by the name of Albert C. Crane, and A. and E. Robbins. They were free to examine it for themselves.

Cross-int. 180. Can you give the names of any others who saw it?

(Same objection.)

Ans. Not that I recollect.

Cross-int. 181. Did you apply for a patent on that apparatus, or on the second apparatus that you constructed for your firm?

(Same objection.)

Ans. No.

Cross-int. 182. Why did you not?

(Same objection.)

Ans. Because I wished everybody to enjoy the same privilege that I did.

Cross-int. 183. After your first alteration of your old ice-box, and after you had put it in operation, did you again alter it or change its construction in any way? If yea, state what you did.

(Same objection.)

Ans. No; not the old ice-box.

673 Cross-int. 184. Will you state the exact location of that box in the store-house of your firm, when you were experimenting with it as you have stated?

(Same objection.)

Ans. It was standing close to the front wall of the store-house, fronting on Beekman street. The box was on the first floor.

Cross-int. 185. Was there a basement or cellar under the floor on which the box was placed?

(Same objection.)

Ans. It had been filled up either before or since; I don't recollect which. It is filled up now.

Cross-int. 186. Did that box occupy the same position in the store-house during the time you were experimenting with it?

(Same objection.)

Ans. Yes.

Cross-int. 187. What finally became of it?

(Objection as before.)

Ans. It remains there yet.

Cross-int. 188. With the pan, etc., the same as when you experimented with it?

(Objection as before.)

Ans. The pan has been taken out and the box made higher.

Cross-int. 189. When was the pan taken out, and for what purpose has the box been used since?

(Same objection.)

Ans. The pan was taken out about a year after the construction of the box. The box has been since used for packing poultry in.

Cross-int. 190. When you constructed that box, as stated, did you expect to freeze the articles placed in it, or merely to keep or preserve the articles placed in it in the same condition as nearly as possible in which they were when placed there, whether frozen or unfrozen?

(Same objection.)

Ans. I was in hopes from my experiment to do both.

Cross-int. 191. Did you succeed in doing both?

(Same objection.)

Ans. I did.

674 Cross-int. 192. Did you freeze everything that you put into that box in an unfrozen state?

(Same objection.)

Ans. All that was left there for any length of time.

Cross-int. 193. What proportion of the articles thus put in were frozen after they were put in?

(Same objection.)

Ans. I could not tell what proportion.

Cross-int. 194. Did not most of the articles you put into that box in an unfrozen state come out in an unfrozen state?

(Same objection.)

Ans. Yes, because they were not left there a sufficient length of time to freeze.

Cross-int. 195. Why did you not leave them there long enough to freeze?

(Same objection.)

Ans. Because the firm had sale for them.

Cross-int. 196. Did you fill the box full of articles? If yea, how often?

(Same objection.)

Ans. Yes, whenever we had occasion to put them away to keep them over night, or until called for—sometimes not over ten minutes. I don't know how often the box was filled.

Cross-int. 197. About how often?

(Same objection.)

Ans. I have no means of stating.

Cross-int. 198. Can't you state whether you filled it on an average as often as once a day, once a week, or once a month, or in some way approximate to it?

(Same objection.)

Ans. Only as I have stated before.

Cross-int. 199. Is that all the answer you are able to give?

Ans. Yes.

Cross-int. 200. Did you ever fill it?

(Objected to as before.)

675 Ans. I don't know whether I filled it or some of our men filled it. I know it has been filled.

Cross-int. 201. Now, state how many times, as near as you can.

(Same objection.)

Ans. I know that it was filled once.

Cross-int. 202. Is that all that you can state as to the number of times that it was filled?

(Same objection.)

Ans. Yes.

Cross-int. 203. Now, was it not the fact that when articles were placed in that box in an unfrozen state they almost always came out unfrozen?

(Same objection.)

Ans. Yes, not having time to freeze.

Cross-int. 204. Was it not extremely rare to find an article frozen in that box that was placed there in an unfrozen state?

(Same objection.)

Ans. Yes; because they were not left there a sufficient time to freeze.

Cross-int. 205. The main use of the box, then, was not to freeze articles, but to keep them cold until used?

(Same objection.)

Ans. Yes, and for an experiment.

Cross-int. 206. An experiment to freeze them, or ascertain the length of time you could keep them in good condition? Which do you mean?

(Same objection.)

Ans. Both.

Cross-int. 207. If your experiment was to freeze them, why did you not leave them there long enough to be frozen?

(Same objection.)

Ans. They were left there long enough to be frozen to satisfy me that such a thing could be done. After that they were taken out and sold when called for.

Cross-int. 208. And that was all you accomplished, was it not, with respect to freezing articles in that box?

676 (Same objection.)

Ans. Yes.

Cross-int. 209. At the time you found a frozen article in the box that was put there in an unfrozen state, in what part of the chamber marked *b* in the first drawing did you find it?

(Same objection.)

Ans. In all parts of it. The chamber was filled and closed, and all the articles were found frozen.

Cross-int. 210. What were the articles so frozen at the time you refer to?

(Same objection.)

Ans. Chickens, sweet-breads, frogs, that is all I recollect being in the box at that time.

Cross-int. 211. Were they all frozen solid?

(Same objection.)

Ans. They were frozen. I can't say as to the solidity of it.

Cross-int. 212. Were they frozen clear through?

(Same objection.)

Ans. Some were.

Cross-int. 213. Which articles?

Ans. Sweet-breads and frogs, and chickens frozen enough to satisfy me in my experiment.

Cross-int. 214. How long did you have to keep the articles in there to fully freeze them, as last stated?

(Same objection.)

Ans. I should think it took three days to freeze them sufficient for keeping.

Cross-int. 215. When the box was full, did the articles freeze at the bottom of the box as well as at the top?

(Objected to as before.)

Ans. No.

Cross-int. 216. To whom did you sell the frozen articles frozen in that box?

(Objected to as before.)

Ans. I could not say.

677 Cross-int. 217. Cannot you give the name of a single person to whom you sold a single frozen article, frozen in that box?

(Same objection.)

Ans. No.

Cross-int. 218. Did you place ice in the chamber *b* of that box when you kept articles there?

(Same objection.)

Ans. No.

Cross-int. 219. Did you never do so?

(Same objection.)

Ans. No.

Cross-int. 220. How much of the top of the box did the pan *a* cover?

(Same objection.)

Ans. I think it covered six to eight inches of the width at the top of the box and extended the whole length of the box.

Cross-int. 221. Describe the position of the two lids covering the preserving-chamber *b* you spoke of in the box, and the size.

(Same objection.)

Ans. There were two lids, each of equal size, about two feet four inches long, and from twenty inches to two feet wide. These lids were inside of the box, attached to a sleeper on the front side of pan *a*. The lids opened up towards the back of the box, and the top of those lids were on a level with the top of the pan.

Cross-int. 222. Was the box divided into two parts?

(Objected to as before.)

Ans. Yes.

Cross-int. 223. What was the use of each part?

(Same objection.)

Ans. We used them for preserving poultry, game.

Cross-int. 224. Did you place any articles in this box in a frozen state while you were using it?

(Objected to as before.)

Ans. Not that I know of.

Cross-int. 225. Did not your firm receive articles frozen in the natural way, and keep them for sale?

678 (Same objection.)

Ans. They did, in the seasons of the year.

Cross-int. 226. What articles?

(Same objection.)

Ans. Poultry and game of all kinds brought to this market.

Cross-int. 227. How long did you keep the articles brought to you in a frozen state?

(Same objection.)

Ans. Until we wanted to use them for sale.

Cross-int. 228. How long did that happen to be sometimes?

(Same objection.)

Ans. I have no means of knowing as to the length of time.

Cross-int. 229. Did not your firm sometimes keep poultry frozen in the winter in the natural way, until late in the spring, in a frozen state?

(Same objection as before.)

Ans. Yes, as long as they could.

Cross-int. 230. Have they not kept poultry frozen in that way into the summer, sometimes?

(Same objection.)

Ans. Not before I had the large ice-house to put them in.

Cross-int. 231. When you had the large ice-house, the second apparatus described by you, did you not keep poultry frozen in that way far into the summer, sometimes?

(Objected to as before.)

Ans. Yes; but not frozen naturally. I do not think we keep poultry naturally frozen in this apparatus any later than the 1st of June.

Cross-int. 232. Was not that the principal use that your firm made of that apparatus?

(Objected to as before.)

Ans. Yes; the principal was for keeping it frozen naturally.

Cross-int. 233. Where did you get the poultry frozen naturally that you kept and sold?

(Objected to as before.)

Ans. From the State of Vermont, and New York State.

679 Cross-int. 234. Your mode of operation was to purchase the poultry in a frozen state when abundant and cheap, place it in your second apparatus, keep it until poultry was scarce and high in price, or until prices had increased, and then dispose of it, was it not?

(Objected to as before.)

Ans. No.

Cross-int. 235. Please state, then, what your mode of operation was with respect to poultry purchased or received by your firm in a frozen state, at the time your firm were using your second apparatus.

(Objected to as before.)

Ans. To keep it until our demand called for it after being purchased.

Cross-int. 236. But if there was a demand for it by your customers when prices were lower, or only equal to what you paid for it, would you supply that demand?

(Objected to as before.)

Ans. Yes.

Cross-int. 237. How did you determine the temperature of the preserving-chambers of either of your apparatuses?

(Objected to as before.)

Ans. The last one described, by a thermometer, and the other by the condition of the articles placed in it.

Cross-int. 238. Could you tell what degree of cold precisely existed in the preserving-chamber by the condition of the articles in it?

(Objected to as before.)

Ans. My reason taught me it must be below 32° or it could not make ice.

Cross-int. 239. How long did your firm use your second apparatus?

(Objected to, as before.)

Ans. I should think it was about four or five years.

Cross-int. 240. What became of it then?

(Same objection.)

Ans. It wore out and became leaky.

680 Cross-int. 241. Did you make any alterations in it during those four or five years? If yea, what?

(Same objection.)

Ans. I did. I put in water-tight pipes.

Cross int. 242. What pipes do you refer to? Please explain fully.

(Objected to as before.)

Ans. Four additional pipes put to the tank, represented as tank *a*, in the second drawing. They were a foot in diameter at the top, and about eight inches at the bottom. They were all the same length, about two feet six inches long.

Cross-int. 243. What did they enter into at the lower end?

(Objected to as before.)

Ans. Nothing.

Cross-int. 244. How were they drained?

(Objected to as before.)

Ans. By flowing over the top into the main tank.

Cross-int. 245. When the apparatus was in operation, what were they th?

(Same objection.)

Ans. Ground ice, mixed with salt.

Cross-int. 246. Were they not soon filled with salt and sediment?

(Objection as before.)

Ans. No.

Cross-int. 247. Were they not soon filled with pickle, so as to interfere with the filling them with ice?

(Objected to as before.)

Ans. No.

Cross-int. 248. When the ice melted did they not fill with pickle?

(Objected to as before.)

Ans. No, sir. The pressure of the ice in the large tank forced the water over the top. The pipes pass through the bottom of the tank *a*, and hang upon the flange laid on the bottom of the pan, so as to be
681 water-tight. The weight of the ice in the pan *a* forced the ice and salt down into those pipes, and the water over the top back into the pan *a*, from which it drained off.

Cross-int. 249. What was the diameter of the drain-pipe *c*, in your second apparatus?

(Objection as before.)

Ans. I am not sure whether it was four or six inches. It was not larger than six nor smaller than four inches.

Cross-int. 250. What outlet had it, and give the size of it?

(Objection as before.)

Ans. At the elbow, *d*, a smaller pipe extended out of the drain-pipe, *c*, and it had an outlet of about an inch and a half, the same size as the pipe.

Cross-int. 251. When that apparatus was in operation was that outlet kept closed or open?

(Objection as before.)

Ans. Always open.

Cross-int. 252. Was the end of that small pipe lower or higher than the lower end of the drain-pipe, *c*?

(Objection as before.)

Ans. It was lower.

Cross-int. 253. So that the pickle forming in the apparatus flowed into the sewer as fast as it formed?

(Objection as before.)

Ans. Yes.

Cross-int. 254. When that apparatus was worn out, as you have stated, did you build another in its place?

(Objection as before.)

Ans. I did.

Cross-int. 255. Did you ever build one with cone-shaped perpendicular pipes?

(Objection as before.)

Ans. I did not.

Cross-int. 256. If, as you say, you suggested to Mr. Piper that cone-shaped pipes would be preferable to straight ones, why did you not then adopt that suggestion yourself and put cone-shaped pipes into the apparatus you then had?

682 (Objection as before.)

Ans. I could not use pipes that would occupy the room I wanted

for other things, for the reason that I put in boxes, and they (the pipes) would obstruct the passage, and take up the room that I must have for other purposes, pipes not being beneficial for the business that I wanted to use it for.

Cross-int. 257. What business did you wish to use it for?

(Objection as before.)

Ans. Both for large and small boxes and for loose stock as we received them.

Cross-int. 258. Could you not have substituted cone-shaped pipes in place of the straight pipes, *bb*, represented in your last drawing?

(Objection as before.)

Ans. No; because they would take up too much room.

Cross-int. 259. Was Mr. Piper present when you first charged up your second apparatus with ice and salt?

(Objection as before.)

Ans. I think he was.

Cross-int. 260. Had you been introduced to him before that?

(Objection as before.)

Ans. Yes.

Cross-int. 261. Now, are you willing to swear that it was not he that suggested to you, in your conversation with him about the working of your apparatus, that cone-shaped perpendicular pipes would be preferable to straight ones, instead of your suggesting it to him?

(Objection as before.)

Ans. Yes.

Cross-int. 262. When did you make the alteration in your second apparatus that you have described?

(Objection as before.)

Ans. About the following summer.

Cross-int. 263. Were not Middleton, Carman & Co. building their apparatus at the time you first charged yours with salt and ice when Mr. Piper was present?

(Objected to as before.)

683 Ans. They had begun or were about to begin building it.

Cross-int. 264. Did not Mr. Piper say to you that he was going to have cone-shaped or tapering pipes placed in the apparatus of Middleton, Carman & Co., or words to that effect?

(Objection as before.)

Ans. He said nothing about what shape he was going to build it in, as I recollect.

Cross-int. 265. Was not their apparatus being built under his superintendence and direction, as you understood it?

(Objection as before.)

Ans. Yes.

Cross-int. 266. Did he not notify you in substance, immediately after your apparatus was first charged up with ice and salt, that its use in that way would be an infringement of his patent?

(Objection as before.)

Ans. No, sir, not to my knowledge.

Cross-int. 267. Did he not so notify your firm?

(Objection as before.)

Ans. Not at that time, that I know of.

Cross-int. 268. Did he ever so notify them?

(Objection as before.)

Ans. Yes.

Cross-int. 269. How long after he saw you charging your apparatus with ice and salt, as you have stated?

(Objection as before.)

Ans. I am not positive as to the time, but I think it was the following spring.

Cross-int. 270. Did he notify them in writing?

(Objection as before.)

Ans. I think he did.

(Both the preceding interrogatories and answers objected to as it appears that they call for the contents of a written paper which is not produced or accounted for.)

Cross-int. 271. Did he not so notify you or your firm orally as well as in writing?

(Objection as before.)

684 Ans. He did not me. What he did to the firm I can't say.

Cross-int. 272. Did not Mr. Piper in his conversation with you at or about that time, say that he had a patent for an apparatus of the same, or a similar character?

(Objection as before.)

Ans. I am not positive as to his language in that respect. He might have told me, and might not. I can't say.

Cross-int. 273. Did you use your first apparatus in the way you have described after you built your second?

(Objection as before.)

Ans. No.

Cross-int. 274. Did you use your first apparatus at all in the year 1861 in the way you have described?

(Objection as before.)

Ans. In regard to time, if that was the year I built it, I used it immediately after finishing it.

Cross-int. 275. What is the entire amount of time you have used it in the way you have described, that you are willing to swear to?

(Objection as before.)

Ans. A month.

Cross-int. 276. Did you not say to Mr. Carman, or some one in substance, referring to Mr. Piper, "The old man thinks we are infringing on him, does he not?"

(Objection as before.)

Ans. Not to my recollection at that time.

Cross-int. 277. Did you ever say it?

(Objection as before.)

Ans. Some time after the apparatus was built. It might have been a year; it might have been six months.

Cross-int. 278. Do you mean to swear that you used your second apparatus continuously after it was built, some four or five years?

(Objection as before.)

Ans. No, because he did not have stock enough to pay to run it.

Cross-int. 279. How long did it pay to run it?

(Objection as before.)

Ans. Whenever stock was over-plenty.

685 Cross-int. 280. How much time did you run it altogether? State as near as you can.

(Objection as before.)

Ans. Three-quarters of each year for four years. The first year it never was empty to my knowledge.

Cross-int. 281. How long was Minot Robbins gone to the war?
(Objection as before.)
Ans. The first call was thirty days. The second was ninety.
Cross-int. 282. Did he go on more than two calls?
(Objection as before.)
Ans. No.
Cross-int. 283. When did he go on the second call?
(Objection as before.)
Ans. I think it was about a year from the first call. I am not positive as to the time.
Cross-int. 284. What season of the year did he go the second time?
(Objection as before.)
Ans. I could not say positively, but think it was in the spring.
Cross-int. 285. Were you building your second freezer when he went the second time?
(Objection as before.)
Ans. I am not positive whether it was the first or second call. I had begun it before he started.
Cross-int. 286. Do you remember the occasion of the second call for militia on which he went?
(Objection as before.)
Ans. To defend the flag of his country.
Cross-int. 287. What was the particular emergency?
(Objection as before.)
Ans. The rebellion of the Southern States against the flag.
Cross-int. 288. Is that all the answer you are able to give to the question?
(Objection as before.)
Ans. Yes.
Cross-int. 289. Where did he go the second time?
686 (Objection as before.)
Ans. He went to a place called Suffolk.
Cross-int. 290. How long was he gone?
(Objection as before.)
Ans. Ninety days, or thereabouts.
Cross-int. 291. Did he go in the same regiment he went the first time?
(Objection as before.)
Ans. Yes.
Cross-int. 292. Now, when he went to the war a second time, as you have stated, how long had your first apparatus been constructed?
(Objected to as before.)
Ans. I could not say whether it was six months previous to the first call or the second. I think it was in the neighborhood of six months.
Cross-int. 293. Was it one or the other?
(Objection as before.)
Ans. It was one of the two calls.
Cross-int. 294. You speak in one of your answers of using your second apparatus three-quarters of a year at a time. Will you please state which portion of the year you did not use it?
(Objection as before.)
Ans. The season of the year when poultry and game were the scarcest.
Cross-int. 295. What months of the year was that?
(Objection as before.)
Ans. From June first to September first.
Cross-int. 296. During the balance of the year, did you keep your

apparatus constantly charged up, or did you allow it to run down occasionally?

(Objection as before.)

Ans. As the supply of stock we received called for the use of it. We allowed it to run down occasionally.

Cross-int. 297. Was it disused every summer from first of June to first of September until it gave out?

(Objection as before.)

687 Ans. With the exception of the first year.

Re-examination:

Int. 298. After the second apparatus you have described was worn out, as you have stated in your cross-examination, did you arrange a substitute, and if yea, did you use any pipes in that substitute? If not, what did you use instead of pipes?

(Objected to on all the grounds heretofore made by the counsel for the complainant, and also objected, because it refers to matter not brought out in the cross-examination.)

Ans. Yes. I did not use any pipes in it except the drain-pipe. I used V-shaped tanks, of galvanized iron, because that left me all the floor free for placing stock on it.

Int. 299. Did you make use of the expression referred to in the 276th cross-interrogatory before or after the firm of A. & E. Robbins had received some communication from Mr. Piper, referring to his claim as patentee?

(Objection continued.)

Ans. After, I think.

WILLET P. WHITSON.

Adjourned to July 24, 1869, at 10 a. m.

688 *Deposition of Patrick Collins, taken, subscribed, and sworn to before John A. Shields, examiner.*

JULY 24, 1869.

Present, counsel for the respective parties.

PATRICK COLLINS, being called as a witness on the part of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My age is between forty-two and forty-three; I reside at 190 Elm street; I am an oyster-dealer and clerk of Centre Market.

Int. 2. How long have you been clerk of the market?

Ans. Six years.

Int. 3. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market?

Ans. Yes, sir.

Int. 4. How long have you known him?

Ans. I could not tell, it is so long. We were boys together; I suppose it is thirty years; as long as I can remember, anyway.

Int. 5. Do you know his general reputation for truth and veracity?

Ans. Yes, sir.

Int. 6. What is it?

Ans. Very good.

Cross-examined:

Cross-int. 7. Did you ever hear it discussed?

Ans. No, sir; I don't think I did.

Cross-int. 8. Did you ever talk about his character for truth and veracity with any one?

Ans. I don't know that I did, sir.

689 Cross-int. 9. Did you ever make any inquiry about his character for truthfulness?

Ans. No, sir; I did not.

Cross-int. 10. You know it then by the fact that you never heard anything said about it?

Ans. Only what I have heard in relation to this trial.

Cross-int. 11. But have you not just stated that you never heard it discussed, and that you never have talked about it with any one?

Ans. I did not discuss it, sir. Mr. Racey told me himself that his character was doubted here. I believe he said that Mr. Hardman would not believe him under oath. Mr. Racey told me about it himself. That is all the discussion I ever heard about it.

Cross-int. 12. Is that all the answer you are able to make to the question?

Ans. That is all, sir.

Cross-int. 13. Then you have talked about his character with some one, have you not?

Ans. Only what he said himself.

Cross-int. 14. Well, he is a person, is he not?

Ans. Yes, sir.

Cross-int. 15. Did you ever talk about his character for truthfulness with any one else?

Ans. No, sir; not that I know of.

Cross-int. 16. Did any one else ever say anything to you about it?

Ans. Well, sir; not that I know of.

Cross-int. 17. Have you not talked with Mr. Piper on the subject?

Ans. I do not know whether I have or not.

Cross-int. 18. You know Mr. Enoch Piper, do you not?

Ans. Only by having him pointed out to me.

Cross-int. 19. He is now present, is he not?

Ans. The man who was pointed out to me as Mr. Piper is now present.

Cross-int. 20. Did you not have a conversation with Mr. Piper last spring?

690 Ans. I did, but I don't know what time of the year it was. It might have been spring, it might have been summer. The conversation took place partly in Centre Market and partly over in a lager-beer saloon.

Cross-int. 21. Was not Mr. Racey the subject of that conversation?

(Question objected to as immaterial.)

Ans. Part of the time; yes, sir.

Cross-int. 22. Was not his character for truthfulness or otherwise spoken of?

(Same objection, and also that the declarations of the plaintiff in regard to a witness against him are not admissible.)

Ans. No, sir.

Cross-int. 23. You and Mr. Racey are pretty good friends, are you not?

Ans. Yes, sir.

Cross-int. 24. Quite particular friends, are you not?

Ans. Well, I don't know how I would answer that question. We are on good terms; we are good friends.

Cross-int. 25. Is he an associate of yours?

Ans. No, sir; only in the market.

Cross-int. 26. Do you trade with him, and he with you?

Ans. Yes, sir.

Cross-int. 27. How long have you traded with him?

Ans. Well, ever since I have been clerk in Centre Market—six years.

Cross-int. 28. Do you buy your fish chiefly of him?

Ans. Sometimes; yes, sir.

Cross-int. 29. During the past six years have you bought most of your fish from him?

Ans. What I buy I buy most of him, though I distribute my patronage around to others.

Cross-int. 30. Does he buy goods of you?

Ans. Yes, sir.

Cross-int. 31. What has he bought of you, and how long has he been accustomed to purchase of you?

691 Ans. Well, he sometimes buys oysters and clams, scallops, and shell-fish of all kinds, muscles, and whatever kinds I have. I have known him to buy of others in the market in the same line; he has been buying from me for the last six years.

Cross-int. 32. Have you a family, and are you a house-keeper, and how long have you been a house-keeper?

Ans. Yes, sir. I have been a house-keeper about ten months.

Cross-int. 33. Have you ever heard anything said against the character of Mr. Racey for truthfulness?

(Question objected to.)

Ans. No, sir, I don't know as I have.

Cross-int. 34. Did Mr. Racey ask you to come here as a witness?

Ans. Yes, sir.

Cross-int. 35. Did he tell you what he wanted you to testify to?

Ans. Yes, sir.

Cross-int. 36. What do you understand by the words "general reputation for truth and veracity," as applied to a person?

Ans. By dealing with him myself, and others dealing with him, and me being clerk there I would have a good opportunity to know that the man's character stands good for truth and veracity. I do not know what other way to explain it.

Cross-int. 37. But did you go around and speak to the people doing business in the market, or other persons in the vicinity or elsewhere, about Mr. Racey's character for truth and veracity?

Ans. I would state that I go all over the market, and talk to everybody in the market. I did not talk to any person in the market or elsewhere about Mr. Racey's character for truth and veracity.

Cross-int. 38. So, then, you having talked to no one about Mr. Racey's character for truth and veracity, and no one having talked to you on that subject, you therefore say you know his general reputation for truth and veracity, and that it is good?

(Objected to as argumentative.)

Ans. He talked to me about it—about this Mr. Hardman that I mentioned before. Mr. Racey might have spoken to me before about it, three times or once, I don't know how often it was. Now,

692 that I recollect, Mr. Hall, yesterday or the day before, I don't know which, spoke to me. He asked me what I was down here for, or rather what I knew about the case. I told him I did not know anything about the case, but that Mr. Racey wanted me to come here to testify to his character for truth and veracity.

(Answer objected to as irresponsive to the question in every respect.)

Cross-int. 39. Will you please answer this question, to wit: You hav-

ing talked with no one about Mr. Racey's character for truth and veracity except Mr. Racey himself, and no one having talked to you on that subject except Mr. Racey himself, if I have understood you correctly, how are you able to say that you know his general reputation for truth and veracity, and that it is good?

Ans. I stated a few moments ago that I talked to Mr. Hall as well as Mr. Racey about the same thing. I have only the one answer to make, if a man stands well with those who are acquainted with and deal with him, and stands well with those around the market and doing business with him, people trust him and get their money, as far as I know. That is all the answer I can give, sir. [That is what I call establishing a man's reputation.]

(That part of the answer included in brackets objected to, because stated by the witness on the suggestion of counsel for respondents after the previous portion of the answer of the witness had been written down, and witness had been asked by the examiner if he had any further to say in answer to the question, and the witness had replied "No, sir." The examiner, upon request of counsel for respondents, states that he had asked the witness if he had anything more to say, after using the words, "as far as I know," as it appeared to the examiner that the answer of the witness, as it thus stood, was incomplete, and then the witness said "No, sir." After this there was some discussion between counsel, and on the answer being read to the witness he added the words in brackets.)

Cross-int. 40. Is there an open account between you and Mr. Racey at the present time?

Ans. Yes, sir.

Cross-int. 41. I understand you to say that people trust Mr.
693 Racey and get their money. Did you never hear or know of his being bankrupt or insolvent at one time?

(Question objected to as immaterial and irrelevant, and not opened by anything in the examination-in-chief.)

Ans. Yes, sir; I heard something about it.

Cross-int. 42. Did you hear or know of the property at the stands now occupied by him being out of his hands for several years?

(Same objection as before, and also as calling for hearsay testimony.)

Ans. Only what I heard. I heard that the sheriff was there one day and sold him out. I heard that the property at the stands was out of his hands for several years.

PATRICK COLLINS.

Deposition of Wardrop J. Hall, taken, subscribed, and sworn to before Kenneth G. White, examiner.

WARDROP J. HALL, being called as a witness on the part of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Wardrop J. Hall; my age is forty-six; I reside at 113 Crosby street, New York City. I am not in any business. I have been out of business twelve or fifteen years.

Int. 2. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market?

Ans. Yes.

Int. 3. How long have you known him?

Ans. About thirteen years.

Int. 4. Were you at any time connected with any bank at which Mr. Racey conducted his business? If yea, in what capacity?

Ans. Yes, sir. I was a director of the Manufacturers and Mer-
694 chants' Bank of the city of New York. I was aware of Mr. Racey keeping an account there, and I do not know that he kept an account in any other bank.

Int. 5. Were you ever in a cellar under Centre Market in New York City occupied by Mr. Joseph H. Racey, jr.? If yea, state as nearly as you can when first you were in it.

Ans. Yes; about 1860, previous to the war.

Int. 6. Do you know the cellar now occuped by Mr. J. H. Racey, jr., under Centre Market, N. Y. City; and, if yea, is it the same cellar into which you then went?

Ans. The same.

Int. 7. When you went into that cellar, as stated, before the war, state what, if anything, you saw there.

(Objected to generally, and specially as incompetent at this stage of the evidence in the case.)

Ans. I saw a refrigerator that I went down to see at the invitation of Mr. Racey.

Int. 8. On which side of the door, as you entered the cellar, did it stand?

(Objection continued on all the grounds stated before.)

Ans. A little inclined to the left, facing the entrance to the cellar.

Int. 9. Did you look into it?

(Objection continued.)

Ans. Yes.

Int. 10. Please state what you saw on the inside of it. Describe its internal appearance as near as you can.

(Objection continued.)

Ans. It would be a difficult matter. It is a long time ago. I saw several pipes leading from what I supposed to be the top, which I understood to contain ice that was placed there and subjected to a peculiar action to produce a dry and intense cold.

Int. 11. Who was with you at the time?

(Objection continued.)

Ans. Mr. Racey.

695 Int. 12. What was the temperature inside the apparatus as compared with that outside?

(Objection continued.)

Ans. So cold that I considered it unsafe for me to keep my head inside there.

Int. 13. Did you see any fish, game, or poultry, or other animal substances in there?

(Objection continued and objection also as to form.)

Ans. I saw fish, game, and poultry.

Int. 14. What was their condition with reference to their being frozen or unfrozen?

(Objection continued.)

Ans. They were frozen very hard.

Int. 15. Did Mr. Racey make any explanation or statement with reference to the purpose to which he applied this apparatus, or as to the use he intended to put it?

(Objection continued.)

Ans. Yes.

Int. 16. What did he say as to the purpose to which he applied it, or as to the use he intended to put it?

(Objection continued and objected to on the further ground that Mr. Racey's statements to the witness are incompetent in any stage of the case.)

Ans. Mr. Racey invited me down to look at a refrigerator that he had invented, that he thought would preserve meats, fish, or anything else, for years in a perfect state of preservation.

Int. 17. After you saw the apparatus which you have referred to, did you know of Mr. Racey's selling, or exposing for sale, game or other animal substances preserved in a fresh state? If yea, what were they?

(Objection continued.)

Ans. Poultry, fish, that I bought myself.

Int. 18. What was the condition of the fish and poultry you thus purchased of him, with reference to being frozen or unfrozen at the time of purchase, or, if you know, at any preceding time?

(Objection continued.)

696 Ans. Frozen dry.

Int. 19. Do you know the general reputation of Joseph H. Racey, jr., for truth and veracity?

Ans. To my own knowledge it is unexceptionable.

Int. 20. While acting as director of the bank, and during your acquaintance with Mr. Racey, have you had occasion to make yourself acquainted with his character and general reputation?

(Objected to as irrelevant and incompetent.)

Ans. Had there been anything wrong I should have heard of it.

(The answer objected to as irresponsive to the question.)

(Answer continued.) If I am allowed to amend that by saying his character was good in the bank.

(Objected to as irresponsive to the question asked.)

Cross-examined without waiving any objection heretofore made:

Cross-int. 21. How long have you been out of business?

Ans. Somewhere between fourteen and fifteen years.

Cross-int. 22. Do you trade with Mr. Racey at the present time? If yea, how long have you traded with him?

Ans. Yes; twelve or thirteen years.

Cross-int. 23. Are you a house-keeper, and have you been such during the period last mentioned?

Ans. Yes.

Cross-int. 24. In what way have you traded with Mr. Racey, and to what extent?

Ans. Poultry, fish, game, oysters, everything connected with his business. I never examined my bills, but I suppose a few hundred dollars per year.

Cross-int. 25. Have you traded with him constantly during the past year?

Ans. As usual.

Cross-int. 26. How often do you buy goods of him while trading with him as usual?

Ans. Whenever I need them

697 Cross-int. 26. How often is that?

Ans. Once or twice a week; no regular time, only as my family require those articles.

Cross-int. 27. How long have you resided where you now reside?

Ans. Some thirteen years.

Cross-int. 28. Where did you reside before that?

Ans. Sometimes in New Jersey, sometimes in New York City.

Cross-int. 29. Please give the street and number where you last resided in New York City, prior to your present residence in Crosby street?

Ans. Blee'ker street; I can't remember the number.

Cross-int. 30. Did you remove from your residence in Blee'ker street directly to your present residence?

Ans. No.

Cross int. 31. Where did you remove to from your residence in Blee'ker street?

Ans. New Jersey.

Cross-int. 32. In what year?

Ans. I think it was about 1856.

Cross-int. 33. What place in New Jersey?

Ans. Burlington.

Cross-int. 34. How long did you reside there?

Ans. About twenty years in all.

Cross-int. 35. I mean to ask how long you resided in Burlington after your removal from Blee'ker street?

Ans. A few months. Burlington, N. J., was my permanent residence.

Cross-int. 36. Where did you remove to then?

Ans. To my present residence.

Cross-int. 37. In what year or years were you a director of the bank you have mentioned?

Ans. I think the bank was started in 1860; from that time up to within a year.

Cross-int. 38. How are you enabled to fix the time when you visited Mr. Racey's cellar in the way you have stated?

698 Ans. In thinking the matter over, I repeated the subject of my visit at a dinner-table where two of my brothers-in-law were present, and who were fond of field-sports, one of shooting and the other of fishing. What has refreshed my memory, they were then on good terms with each other, but as soon as the war broke out they differed as to the great questions that were then before the people, and did not speak for several years. That is what has refreshed my memory.

Cross-int. 39. Have you since visited that cellar? If yea, how many times?

Ans. But twice to my recollection.

Cross-int. 40. Please state when those times were.

Ans. It would be difficult for me; it is some years since the first time.

Cross-int. 42. Cannot you state the year of either of the times?

Ans. The first I cannot state within a year or two years; I was in there this morning.

Cross-int. 43. Will you please state as near as you can, the first time? I refer to the time mentioned in your last answer.

Ans. I cannot give you any better answer than I have already given.

Cross-int. 44. You say you cannot state it within one or two years. Can you state it within three years?

Ans. Well, I can state it is more than three years, but it would be impossible for me to refer to the time.

Cross-int. 45. Was it within four years?

Ans. I can't say.

Cross-int. 46. Was it more than four years ago?

Ans. I can't say, as I can't locate the time, the year. I only know the circumstance.

Cross-int. 47. Was it within five years ago?

Ans. If you were to ask me all day, I don't think I could come any nearer with my answer. I might add that it was in the summer season.

Cross-int. 48. Was it within six years ago?

Ans. I don't think it was anterior to six years.

Cross-int. 49. Are you positive of it?

699 Ans. No.

Cross-int. 50. Are you positive it was within seven years?

Ans. No.

Cross-int. 51. Are you positive it was within eight years ago?

Ans. I have nothing to regulate my memory with; no circumstances. I am not positive.

Cross-int. 52. Are you positive that it was within nine years ago?

Ans. Only so far as presumption goes. It was within nine years. I am positive it was within nine years.

Cross-int. 53. What enables you to be positive that it was within nine years ago, when you are not positive that it was within eight years ago?

Ans. My previous visit, or first visit, to the cellar we had peace. On my second visit the country was at war. That is why I am positive it was within nine years.

Cross-int. 54. Is there any other circumstance that determines your recollection, except what you have stated in your last answer?

Ans. No; not that I can think of at the present time.

Cross-int. 55. Are you positive the country was at war when you made your second visit to the cellar?

Ans. Yes.

Cross-int. 56. What war do you refer to?

Ans. The civil war between North and South.

Cross-int. 57. How are you enabled to determine the time of your second visit to the cellar as being during the civil war? What connection is there between the two events?

Ans. The fact of Centre Market being a recruiting station; troops in their passage through the city would remain over night at that station, and sometimes for two or three days. Hence they were lounging about the market and sidewalks, seated on cellar-doors or any other place, rendering it difficult to pass through them to the entrance of any place.

Cross-int. 58. Were the troops in the way when you made your second visit to the cellar?

Ans. Only so far as to attract attention.

700 Cross int. 59. Were the troops at that market, more or less, during the whole of the war?

Ans. I should think they were.

Cross-int. 60. Were the troops there pretty constantly?

Ans. I should think they were.

Cross-int. 61. You saw them quite frequently, did you not?

Ans. Yes.

Cross-int. 62. Once or twice a week during the whole period of the war, did you not, when you were at home?

Ans. Yes.

Cross-int. 63. How many times a week were you usually at that market during the period of the war?

Ans. Some weeks, every day; some weeks, twice or three times.

Cross-int. 64. Do you remember seeing troops there every time you visited this market during the war?

Ans. No.

Cross-int. 65. Are you able to tell every time that you saw troops there when you visited the market during the war, and every time you did not see troops?

Ans. No.

Cross-int. 66. Did you see any troops there when you visited the cellar the second time?

Ans. Yes.

Cross-int. 67. Can you name any other time when you saw troops there?

Ans. No specific time.

Cross-int. 68. How are you enabled to remember, then, that you saw troops about the market the identical day and time that you visited this cellar?

Ans. From the difficulty of crowding through them.

Cross-int. 69. Are you willing to swear, as a matter of memory, that you had to crowd through the troops, to enter the cellar?

Ans. From the best of my memory I state that I passed through the troops, which were rather an inconvenience, as the sidewalks were usually clear.

701 Cross-int. 70. What were the troops doing at the time you passed into the cellar?

Ans. Lounging, talking.

Cross-int. 71. At what particular point of your progress into the cellar did you experience the difficulty and inconvenience spoken of?

Ans. There was no difficulty or inconvenience; merely that the sidewalks were occupied by bodies of men usually at that time, compelling the citizens not being obliged to attend market to take the other side of the street.

Cross-int. 72. Will you now tell me why you previously answered, in answer to my question, that you could not state that your second visit to that cellar was within three years ago?

Ans. Your last question to me was within nine years ago. That is the question which I think I have been answering.

Cross-int. 73. Have you not stated in this examination that you could not say whether or not your second visit to that cellar was within four years from now?

Ans. Not to my memory, the way that question reads.

Cross-int. 74. Might your second visit have been within four years from now?

Ans. No, I think not.

Cross-int. 75. Might it have been within five years from now?

Ans. I cannot say.

Cross-int. 76. Did you see the inside of the refrigerator you have mentioned at the time of your second visit?

Ans. Indistinctly, yes.

Cross-int. 77. Have you not stated in your examination to-day that you could not say your second visit to the cellar was more than four years ago?

Ans. I don't remember locating the time, the year; two or three years. But I have located the time within nine years.

Cross-int. 77. Well, was it more than four years ago you made your second visit to the cellar?

Ans. It might have been, from the fact of troops being there.

702 Cross-int. 78. Are you positive that it was more than four years ago?

Ans. No; from the fact of troops being there, it must have been during the war.

Cross-int. 79. What was the occasion of your visit to the cellar the second time?

Ans. The invitation of Mr. Racey.

Cross-int. 80. For what purpose?

Ans. To see the improvements in his refrigerator.

Cross-int. 81. What were the improvements?

Ans. I cannot say, as it was too cold for me to risk my body in the refrigerator.

Cross-int. 82. Did you attempt to see them?

Ans. I did.

Cross-int. 83. That was what you went in there for, was it not?

Ans. Yes.

Cross-int. 84. Did he explain them to you?

Ans. Yes; he undertook to explain to me, but it was too cold for me to remain.

Cross-int. 85. In what respect did he say he had made an improvement?

(Objected to as not being called for by anything in the direct examination, and not open to them on this cross-examination.)

Ans. In regard to some chemicals used in the ice at the time.

Cross-int. 86. What other improvements did he mention?

(Objection continued, and also to the form of the question, as assuming that he did mention other improvements.)

Ans. There my memory fails. I cannot remember, as I remained there but a few moments, because of the extreme dampness and cold of the cellar.

Cross-int 87. What chemicals did he mention as used in the ice?

(Objection continued.)

Ans. He did not mention any.

Cross-int. 88. Did he not tell you that he used some chemicals in the ice at the time?

(Objection continued.)

703 Ans. Some improvement in chemicals.

Cross-int. 89. What was that improvement?

(Objection continued.)

Ans. I don't know.

Cross-int. 90. Did you look into the inside of the refrigerator at that time?

(Objection continued.)

Ans. Merely for a moment.

Cross-int. 91. What did you look in there for?

(Objection continued.)

Ans. To see if I could see anything that would interest me.

Cross-int. 92. Did you examine any other part of the refrigerator?

(Objection continued.)

Ans. No.

Cross-int. 93. Did Mr. Racey ask you to look inside of it?

(Objection continued.)

Ans. Yes, sir.

Cross-int. 94. For what purpose?

(Objection continued.)

Ans. Simply to show me his improvements.

Cross-int. 95. Did you look in through the door of the freezer?
(Objection continued.)
Ans. Yes.
Cross-int. 96. What did you see in there?
(Objection continued.)
Ans. I saw a large funnel-shaped or hopper-shaped reservoir, and tubes leading from it covered with white frost. I saw fish, poultry, and game; nothing else to my knowledge.
Cross-int. 97. How many tubes did you see?
(Objection continued.)
Ans. I can't remember.
Cross-int. 98. What improvements in the inside were you looking after?
(Objection continued.)
Ans. I was not looking after any.
704 Cross-int. 99. Have you not stated that you went in there to look at the improvements which Mr. Racey had made in it?
(Objection continued.)
Ans. Yes, at the invitation of Mr. Racey.
Cross-int. 100. Well, did you see any?
(Objection continued.)
Ans. I declined remaining in the cellar, as I said before, on account of the cold and dampness. I could not state what improvements were on the old, or on the new. I was an incompetent judge of what the improvements were.
Cross-int. 101. What do you mean by improvements on the old or on the new?
(Objection continued.)
Ans. Well, I presumed at the time that Mr. Racey had not perfected his invitation on the first, and had made some improvements on the second, which were not explained to me fully; and, not being interested, I gave the matter no thought.
Cross-int. 102. Were the tubes the same size in the second one as in the first?
(Objection continued.)
Ans. I can't say, as I did not examine it minutely.
Cross-int. 103. Were they arranged in the same way in the second as in the first?
(Objection continued.)
Ans. I don't remember.
Cross-int. 104. Did you see the hopper-shaped reservoir you spoke of in the first one?
(Objection continued.)
Ans. I don't remember that I did.
Cross-int. 105. Did you see any horizontal tube or tubes in the second one?
(Objection continued.)
Ans. I don't remember.
Cross-int. 106. Was there more than one hopper-shaped reservoir in the second?
(Objection continued.)
705 Ans. I remember but one, putting my head inside the door.
Cross-int. 107. Did Mr. Racey say he had made any improvements in the tubes or internal arrangement of the refrigerator?
(Objection continued.)

Ans. Mr. Racey at that time said he had made improvements; but it is so long ago that I do not recollect the words of the conversation.

Cross-int. 108. Was this second refrigerator larger or smaller than the first?

(Objection continued.)

Ans. I can't say.

Cross-int. 109. On which side of the cellar was the second refrigerator situated?

(Objection continued.)

Ans. On the right as you enter.

Cross-int. 110. How near to the entrance-door of the cellar?

(Objection continued.)

Ans. I should say eight to ten feet.

Cross-int. 111. Did you also at that time look into the inside of the first refrigerator?

(Objection continued.)

Ans. No.

Cross-int. 112. Was it still standing there on the left-hand side of the cellar as you enter?

(Objection continued.)

Ans. I could not remember.

Cross-int. 113. Did you see an eel-tank there?

(Objection continued.)

Ans. Yes.

Cross-int. 114. What was the shape of the perpendicular tubes descending from the hopper-shaped reservoir in the second refrigerator that you examined at your second visit to the cellar?

(Objection continued.)

Ans. I could form no idea of the shape of them.

Cross-int. 115. What was the shape of the perpendicular tubes in the first one that you examined?

706 (Objected to as before.)

Ans. I don't remember.

Cross-int. 116. How near to the wall of the cellar on the right-hand side of the cellar, as you enter, did the second refrigerator you have mentioned stand?

(Objected to as before.)

Ans. I paid no attention to its position, only it was on the right of the entrance.

Cross-int. 117. What did you see in the cellar, when you visited it this morning?

(Objection continued.)

Ans. I saw a very large refrigerator in the cellar, standing on the right of the entrance, close up to the rear wall of the cellar; an eel-tank; a load of ice; that is all that I noticed.

Cross-int. 118. Was this large refrigerator standing in the same place where you saw the second refrigerator that you examined on you' second visit to the cellar?

(Objection continued.)

Ans. Yes, sir.

Cross-int. 119. Now, do you mean to say that when you visited the cellar the second time, the first or old refrigerator was not standing in the cellar then?

(Objection continued.)

Ans. I don't remember.

Cross-int. 120. Might it have been there on the left-hand side of the cellar, and you not see it unless your attention had been called to it?
(Objection continued.)
Ans. Yes.
Cross-int. 121. Was your attention called to it in any way?
(Objection continued.)
Ans. No.
Cross-int. 122. What were you most interested in in the cellar at the time of your second visit to it?
(Objection continued.)
707 Ans. I was not interested in anything in it in particular, only to get out of it as quick as possible.
Cross-int. 123. Did you examine the eel-tank, and the eels in the same, at the time of that visit?
(Objection continued.)
Ans. Only by a hasty glance.
Cross-int. 124. Did you see the eel-tank in the cellar on the occasion of your first visit?
(Objection continued.)
Ans. I don't think that I did; I have no recollection.
Cross-int. 125. At the time that Mr. Racey invited you to visit the cellar the second time, did he say to you that he had built a new and better refrigerator than the other one?
(Objection continued.)
Ans. No.
Cross-int. 126. Did he say that he had made an improved one, or words to that effect?
(Objection continued.)
Ans. No.
Cross-int. 127. What season of the year did you visit the cellar the first time?
(Objection continued.)
Ans. To the best of my belief, it was in the summer season.
Cross-int. 128. What season of the year did you visit the cellar the second time?
(Objection continued.)
Ans. I think that was in the summer season.
Cross-int. 129. Did you see what Mr. Racey charged either of the refrigerators with?
(Objection continued.)
Ans. No.

(Adjourned to July 27, 1869, at 11 a. m.)

708 JULY 27, 1869.

Present, counsel on both sides.

Cross-int. 130. What was your business before you were out of business?
Ans. I was an architect and builder.
Cross-int. 131. Where was your place of business?
Ans. Burlington, New Jersey.
Cross-int. 132. How long had you followed that business in Burlington?
Ans. Well, about ten years.
Cross-int. 133. Did you follow that business anywhere else?
Ans. That was my residence while carrying on the business.
Cross-int. 134. Where did you carry on that business?

Ans. In Burlington, New Jersey.

Cross-int 135. Did you ever carry on that business anywhere else?

Ans. That was my place of business; I have had contracts in various places.

Cross-int. 136. Did you ever have any other place of business besides Burlington?

Ans. If taking and filling of contracts out of Burlington, I have.

Cross-int. 137. When did you first become acquainted with Mr. Racey?

Ans. I can't mention the exact time.

Cross-int. 138. Please state as near as you can.

Ans. It has been thirteen or fourteen years since I first knew him, to the best of my knowledge.

Cross-int. 139. Where and in what way did you become acquainted with him?

Ans. As men usually do in dealing.

Cross-int. 140. What dealing do you refer to?

Ans. In the business that Mr. Racey carries on.

709 Cross-int. 141. What was the first dealings you had with him?

Ans. I presume it was the purchase of some of his commodities.

Cross-int. 142. Have you any recollection about it?

Ans. I have not.

Cross-int. 143. Were you introduced to him by any one?

Ans. No.

Cross int. 144. In what place or building did you first see him?

Ans. At his stall in Centre Market.

Cross-int. 145. Did you speak with him?

Ans. Yes.

Cross-int. 146. Did you purchase anything from his stall?

Ans. I don't remember.

Cross-int. 147. Do you remember the conversation you had with him?

Ans. I do not.

Cross-int. 148. How came you to speak with him?

Ans. I spoke to him as I would to any other man in the market that I wished to purchase of or price his commodities.

JULY 28, 1859—11 a. m.

Present, counsel for the respective parties.

Cross-examination continued:

Cross-int. 149. What other dealings have you had with Mr. Racey besides trading with him at his stall? Please state fully and particularly.

Ans. No other dealings.

Cross-int. 150. What had he to do with the bank of which you were a director?

Ans. Nothing.

Cross-int. 151. Did he deposit money there?

Ans. Yes.

710 Cross-int. 152. How soon after you became a director of the bank?

Ans. I have no idea of the time.

Cross-int. 153. Please state as near as you can.

Ans. It might have been from two to five years.

Cross-int. 154. Was he a depositor at the bank when you ceased to be a director?

Ans. Yes.

Cross-int. 155. Did you have any intercourse with him, in business or otherwise, outside of your dealings in the market?

Ans. No.

Cross-int. 156. Did you ever belong to the same club or association of any kind with him?

Ans. No.

Cross-int. 157. Did you ever have occasion to investigate his character for truthfulness and veracity by inquiry or otherwise?

Ans. No.

Cross-int. 158. Did you ever discuss his character for truthfulness and veracity with any one?

Ans. No.

Cross-int. 159. Did any one ever speak to you about his character for truthfulness and veracity?

Ans. No.

Cross-int. 160. All you mean to say, then, is that you have had dealings with him for several years, and have had no trouble with him in your dealings, and you, therefore, deem his character unexceptionable, is it?

Ans. I deem his character unexceptionable.

Cross-int. 161. That is all the answer you have to make to the question, is it?

Ans. I will amend my former answer by stating more specifically. I have had dealings with him for many years, but had not the least trouble. I found him truthful and fair in all his transactions with me. Hence I deem his character unexceptionable.

Cross-int. 162. Did you ever know of his being bankrupt or insolvent?

711 Ans. No.

Cross-int. 163. Did you never hear of it?

Ans. No.

Cross-int. 164. Please give the names of the two brothers-in-law you have referred to.

Ans. I object to the question, as I do not see I have any right to bring my family matters into this case, being disconnected with the affair altogether.

Cross-int. 165. Have you not referred to two brothers-in-law in your previous testimony?

Ans. Yes, merely to assist my memory.

Cross-int. 166. Have you not referred to an interview with them as a means by which you were enabled to determine a date?

Ans. Yes.

Cross-int. 167. Why, then, do you decline to give their names?

Ans. Because I think it irrelevant to the case.

Cross-int. 168. Is that your only reason?

Ans. No.

Cross-int. 169. What other reason have you?

Ans. That I do not wish to introduce the private bickerings of my family into the affairs of others.

Cross-int. 170. Do you pretend to know the merits of the questions involved in this case so as to be able to determine what is relevant and what is irrelevant evidence?

Ans. I would answer that by saying that a question may be asked that is proper and also one that is improper.

Cross-int. 171. Who is to determine that fact on the trial of a cause, the witness or the court?

Ans. The court.

Cross-int. 172. I now repeat the question: will you now please give the names of the two brothers-in-law referred to by you in a previous answer?

Ans. I decline to answer the question on the grounds already stated.

(The counsel for the complainant requests the examiner to instruct the witness that it is not for him to determine the relevancy of the question, but it is for the court, and his duty is to answer the question.

712 The examiner declines on the ground that he has no authority so to do.)

Cross-int. 173. Where do these brothers-in-law reside at the present time?

Ans. One is in Canada; the other is deceased.

Cross-int. 174. In what town or city in Canada does the one living reside?

Ans. Well, I don't know where he resides in Canada. Last he was in Toronto.

Cross-int. 175. When did you last see him?

Ans. About the first week in June of this year.

Cross-int. 176. Where did you see him?

Ans. In New York.

Cross-int. 177. Was he then a resident of Toronto?

Ans. No.

Cross-int. 178. Of what place was he a resident then?

Ans. The city of New York.

Cross-int. 179. How long had he been residing in New York at that time?

Ans. Nearly all his life.

Cross-int. 180. Has he since gone to Toronto?

Ans. Yes.

Cross-int. 181. Did he go there to reside?

Ans. I presume not.

Cross-int. 182. Do you know what place he was contemplating a residence in when he left for Canada?

Ans. I do not.

Cross-int. 183. When did the other brother-in-law die?

Ans. Next November will be two years.

Cross-int. 184. Who else was present at the time you had the conversation with your brothers-in-law as stated before?

Ans. I don't remember.

Cross-int. 185. Where did the conversation take place?

Ans. At table.

Cross-int. 186. At whose table?

Ans. My father-in-law's.

713 Cross-int. 187. In what town or city?

Ans. In the city of New York.

Cross-int. 188. The street and number?

Ans. 67 Prince street.

Cross-int. 189. Cannot you give the name of any other person who was present except your two brothers-in-law?

Ans. My wife might have been present.

Cross-int. 190. A great many persons might have been present. The question is, cannot you give the name of one person besides yourself and brothers-in-law who was present at that conversation?

Ans. I do not remember of any one being present, not even my wife.

Cross-int. 191. Did your brothers-in-law ever visit Mr. Racey's cellar?

Ans. I don't know.

Cross-int. 192. Did you ever talk with them again about it?

Ans. I might have done so.

Cross-int. 193. When was your attention first called to that conversation with your brothers-in-law?

Ans. By my examination here.

Cross-int. 194. Had you ever spoken about it to any one since that conversation occurred prior to your testifying?

Ans. I presume that I have.

Cross-int. 195. I mean by it the fact of your having had such a conversation with your brothers-in-law?

Ans. No.

Cross-int. 196. Have you ever given any thought to that conversation until you referred to it in this examination?

Ans. No.

Cross-int. 197. After your first visit to Mr. Racey's cellar, did you tell any one else about it besides your brothers-in-law?

Ans. I presume that I have a great many.

Cross-int. 198. Will you give their names and the times when you told them?

Ans. Bryan Lawrence, Mr. Leaman; it is impossible for me to state the time.

714 Cross-int. 199. Were they the first persons you told of it?

Ans. I have no recollection as to that particular question.

Cross-int. 200. Please give their residence and place of business.

Ans. Place of business, Centre Market; residence, I don't know.

Cross-int. 201. What is their business?

Ans. Butcher.

Cross-int. 202. Did you ever visit the cellar with any one else besides Mr. Racey?

Ans. No.

Cross-int. 203. Was any one present in the cellar when you visited it with Mr. Racey at any one of the times you have mentioned?

Ans. I think not.

Cross-int. 204. In the course of your trade with Mr. Racey, did you ever purchase any frozen articles of him?

Ans. I don't remember whether I did or not.

Cross-int. 205. Did you not buy frozen fish, or game, or poultry at his stands?

Ans. I might have done so; but I did not see them until they were put on my table to eat.

Cross-int. 206. Have you no recollection about it?

Ans. No.

Cross-int. 207. Did you never purchase of him preserved fresh fish or game out of their season?

Ans. They were all put on my table in a good state of preservation.

Cross-int. 208. Is that all the answer you can give to the question?

Ans. Of course, they were purchased.

Cross-int. 209. Did your two brothers-in-law ever become reconciled with each other? If yea, when?

Ans. Yes; three or four weeks before the death of one.

Cross-int. 210. Did they become estranged from each other before or after the war broke out?

Ans. After the war broke out.

Cross-int. 211. How long after the war commenced?

715 Ans. I should say as early as a month.

Cross-int. 212. When did the war commence?

Ans. I think in April, 1861, to the best of my recollection.

Cross-int. 213. And you think your brothers-in-law quarreled in May, 1861?

Ans. It might have been in May, sooner or later.

Cross-int. 214. Might it not have been later than May?

Ans. It might have been.

Cross-int. 215. Did they live with your family?

Ans. What do you mean by my family?

Cross-int. 216. I give the word "family" its usual meaning—meaning yourself, wife, and children, if you had any; otherwise the family where you boarded?

Ans. No.

Cross-int. 217. Did you keep house at that time?

Ans. I did.

Cross-int. 218. Did you have a wife and children—either or both?

Ans. I had a wife—no children.

Cross-int. 219. You kept house with your wife, I suppose?

Ans. Yes.

Cross-int. 220. Where did these two brothers-in law reside at the time? Please state whether either or both of them kept house, and where, and if they did not keep house, with whom did they board or live, and where, the street and number.

Ans. They resided at 67 Prince street. They did not keep house. They lived with their father.

Cross-int. 221. Were they brothers-in-law by marriage to your sisters, or were they brothers to your wife?

Ans. They were brothers to my wife.

Cross-int. 222. When did they cease to live at home with their father?

Ans. One of them lived at home until he died; when the other is at home, he lives with his father.

Cross-int. 223. What proportion of the time was he at home?

Ans. The greater portion of his time.

716. Cross-int. 224. Was he in business in New York?

Ans. No.

Cross-int. 225. Where did he do business?

Ans. He never had any business.

Cross-int. 226. Did the one who died have any business?

Ans. No.

Cross-int. 227. Did either of them go to the war?

Ans. No, sir.

Cross-int. 228. Do you know William H. Racey?

Ans. Mr. Racey has several brothers, but I don't know their Christian names.

Cross-int. 229. For what purpose did you visit the cellar the last time?

Ans. To look at the refrigerator and the game and fish.

Cross-int. 230. Did you see more than one refrigerator in that cellar?

Ans. No.

Cross-int. 231. Were there not two there at the time of your last visit?

Ans. No.

Cross-int. 232. Did you examine the interior of the refrigerator at your last visit?

Ans. I did.

Cross-int. 233. Whereabouts in the cellar was it situated with reference to the door of the cellar?

Ans. Partly in front, inclining to the right of the entrance.

Cross-int. 234. Was it in operation at the time?

Ans. What do you mean by operation?
Cross-int. 235. Was it in use?
Ans. Yes.
Cross-int. 236. What did you see in the interior?
Ans. Fish, sweet-bread.
Cross-int. 237. Were they in a frozen condition?
Ans. Perfectly hard and dry.
Cross-int. 238. Describe the interior of the refrigerator.

717 Ans. It seemed to be nearly a square box, in which I could stand up without inconvenience, boarded up around, the boards being perfectly dry, with what I took to be a reservoir of metal, with metal pipes covered with a dry frost.

Cross-int. 239. Were the pipes perpendicular or horizontal?
Ans. To the best of my recollection, they were perpendicular.
Cross-int. 240. Were they straight or tapering?
Ans. They could not be perpendicular if they were tapering.
Cross-int. 241. Were they larger at the top than at the bottom, or the same size, or smaller?
Ans. I cannot recollect, because they were covered with a very thick frost, and it would be difficult for me to determine without a close inspection.
Cross-int. 242. How many perpendicular pipes were there?
Ans. I did not count them.
Cross-int. 243. What are they connected with at the top?
Ans. I should say a reservoir or metal chest.
Cross-int. 244. Was there more than one reservoir or metal chest?
Ans. I think there was but one in that compartment.
Cross-int. 245. With what were the perpendicular pipes connected at the bottom?
Ans. I did not see the connection.
Cross-int. 246. Did they extend to the bottom of the box?
Ans. To the best of my recollection, they did.
Cross-int. 247. Did you know what was contained by those pipes and the reservoir, or the metal chest, when in use?
Ans. There was ice in the metal chest.
Cross-int. 248. Anything else?
Ans. That I don't know.
Cross-int. 249. What difference in the interior did you observe between this refrigerator and the interior of the refrigerator you last saw before that in the same cellar?

(Objected to, it not appearing before that the cross-interrogatories from 231 inclusive related to, or were intended to relate to, any other apparatus, freezer, or refrigerator than that referred to in the direct examination. Respondents now object to all interrogatories referred to

718 in this objection if they applied, or were intended to be applied, to any other apparatus than that referred to in the direct examination of this witness, on the ground that the matter is not open to the complainants on cross-examination, and also because said inquiries are irrelevant and immaterial.)

Ans. In the greater capacity of the last.
Cross-int. 250. Did you go inside of the last refrigerator?
(Objection continued.)
Ans. I did.
Cross-int. 251. How long did you stay inside?
(Objection continued.)
Ans. About half a minute.
Cross-int. 252. When did you first see the eel-tank in the cellar?

(Objection continued.)

Ans. I can't state the time.

Cross-int. 253. Please state as near as you can.

(Objection continued.)

Ans. It might have been three to six years.

Cross-int. 254. At the times of these several visits of yours to that cellar, did you make any memorandum of the time and particulars of your visits, so as to enable you to state the times when they occurred?

Ans. No.

Cross-int. 255. When was your attention first called to them, or any one of them, by any one?

Ans. Upon this examination.

Cross-int. 256. Prior to this examination have you not talked with Mr. Racey about them?

Ans. I have talked with Mr. Racey at times of the wonderful power of his refrigerator in preserving meats, etc.

Cross-int. 257. But have you not talked with Mr. Racey with reference to the dates of your visits to the cellar?

Ans. No.

Cross-int. 258. Did you ever see any other refrigerator of a similar character besides his?

Ans. Never.

719 Cross-int. 259. Did you never hear of any others of a similar character being used in this city?

(Objection renewed as stated in the 249th cross-interrogatory.)

Ans. No.

Cross-int. 260. When you looked into the second refrigerator you have named, at the time of your second visit to the cellar, did you expect to see the chemicals you referred to in the interior?

(Objection continued.)

Ans. No.

Cross-int. 261. Where did you expect to find them?

(Same objection.)

Ans. I did not expect to find them at all.

Cross-int. 262. Did you ever know what was put with the ice in these refrigerators?

Ans. No.

Cross-int. 263. If I understand you, you say the reputation of Mr. Racey is unexceptionable. Did you never learn or hear of his being indicted for larceny or embezzlement in this city?

(Objection renewed.)

Ans. Never in my life.

Cross-int. 264. Please give the street and number where your father-in-law now resides.

Ans. Sixty-seven Prince street.

W. J. HALL.

Adjourned to the 28th instant, at 10 a. m.

720 *Deposition of Sebastian Löffalman, taken, subscribed, and sworn to before John M. Shields, examiner.*

Present, counsel on both sides.

WEDNESDAY, *July* 28, 1869.

SEBASTIAN LÖFFALMAN, sworn as a witness on the part of defendants, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. Sebastian Löffalman; age, thirty-eight years; reside 158 Rivingston; occupation, tinsmith, 245 Centre street.

Int. 2. Examine the exhibit now shown you, and marked Exhibit AA, K. G. W., U. S. Com., and state by whom the metal-work therein was done, and when, if you know.

(Objected to as being incompetent at this stage of the evidence in the case, not being in rebuttal of the evidence offered by the complainant in reply to evidence offered by the respondents, but simply *accumulative* to the respondents' said evidence.)

Joseph J. Smith sworn as an interpreter.

Ans. I done the work myself about a year and three months ago.

Int. 3. At whose request did you do it?

(Objection continued.)

Ans. At Mr. Racey's.

Int. 4. What is Mr. Racey's business, where does he carry it on, and did he carry on the same business at the same place when you done this work?

(Objection continued.)

Ans. Fish-dealer, in Centre Market. He carried on the business then at the same place at the time I done the work.

721 Int. 5. What model, if any, did you follow in doing this work?

(Objection continued, and further objected to as to form.)

Ans. Yes; he had a large box, which I repaired several times, and that is the one from which I took the model of this work.

Int. 6. Where was that box?

(Objection continued.)

Ans. In the basement of Centre Market.

Int. 7. By basement do you mean what we call cellar?

(Objection continued.)

Ans. Yes.

Int. 8. Do you know which cellar it was, counting from Broome street?

(Objection continued.)

Ans. About the centre of the market.

Int. 9. Was there also an eel-tank in that cellar?

(Objection continued.)

Ans. Yes; a large one.

Int. 10. Is there any difference in the shape of the metal-work in the Exhibit AA and that box in the cellar?

(Objection continued.)

Ans. Exactly the same.

Int. 11. Was there any difference in the location and shape of the pipes on the back part of Exhibit AA and the pipes on the box in the cellar, either in location, or shape, or anything of the kind?

(Objected to.)

Ans. It is the very same—location of pipes and everything.

Int. 12. Is there any difference in the metal-work of this Exhibit AA, either in shape or location, and the metal-work [that] was in that box in the cellar?

(Objection continued.)

Ans. It is just the same.

Int. 13. When first did you see that box in the cellar, and what, if anything, did you then do to it?

(Objection continued.)

Ans. About three years and nine months ago I first saw it. There was some holes made in it by ice-hooks, and I repaired the holes.

722 Int. 14. Have you ever repaired metal-work in that box at any other times? If so, how many times?

(Objection continued.)

Ans. Yes; at three other times, making four in all.

Int. 15. Can you tell when you worked on that box at any other times than the first time, and, if so, what you did?

(Objection continued.)

Ans. About two years ago was the next time. One of the pipes leaked at its connection with the horizontal pipe, and the other one was loose on the side—the rivets had sprung apart. The next time was about a year and a half ago. Then the top pans was rusty all around. I took out a piece and put in a new piece a foot all around in height.

Int. 16. Is that box in the cellar now?

(Objection continued.)

Ans. No; I tore it out.

Int. 17. When did you tear it out?

(Objection continued.)

Ans. About a year ago this time.

Int. 18. Who helped you?

(Objection continued.)

Ans. A little boy; an apprentice where I work.

Int. 19. Did you tear down the metal-work as well as the wood-work?

(Objection continued.)

Ans. Only the metal-work.

Int. 20. What was the condition of the metal, rusty or worn?

(Objection continued.)

Ans. Everything was spoiled, not fit to be used—rusty.

Int. 21. How long have you been at work on metals?

(Objection continued.)

Ans. Sixteen years.

Int. 22. What kind of metal was used in that box?

(Objection continued.)

Ans. Galvanized iron.

723 Int. 23. How long could galvanized iron be used as that was used before it would present the same appearance as that did when it was taken down?

(Objection continued, and further because no sufficient foundation has been laid for putting the question.)

Ans. Ten or twelve years.

Int. 24. At the time the box was torn down, did you examine the condition of the wood-work as to whether it was rotten?

(Objection continued.)

Ans. I took no particular notice of the wood-work at all.

Cross-examined by I. J. Cutler, without waiving any objections previously made:

Cross-int. 25. For whom do you now work?

Ans. Henry Schmidt, in Centre street.

Cross-int. 26. How long have you worked there for him?

Ans. First time I worked for him four years; then I came back and worked two years and a half.

Cross-int. 27. How long were you away from Smith's employ?

Ans. Six months.

Cross-int. 28. What is Smith's full name, and where is his place of business?

Ans. Henry Smith, 247 Centre street, New York City.

Cross-int. 29. How long have you known Racey?
Ans. A little over four years.
Cross-int. 30. What is the first work you ever done for Racey?
Ans. Repairing fish-boxes, in the shop, etc.
Cross-int. 31. What is the first work you ever done for him?
Ans. I cannot tell; repairs on fish-boxes.
Cross-int. 32. When did you do the first job you did for him?
Ans. Over four years ago.
Cross-int. 33. Where was that done, and what was it?
Ans. In the cellar of Centre Market. I can't remember what it was, but I think it was on the fish-boxes. Could not tell whether it was putting on strainer, or whether it leaked.
Cross-int. 34. Whereabouts in the cellar was that fish-box that you first repaired situated?
724 Ans. In the corner of the cellar.
Cross-int. 35. On which side of the entrance-door was it situated?
Ans. On the left-hand side.
Cross-int. 36. How many boxes were there in the cellar at that time?
Ans. One large one.
Cross-int. 37. What else was there in the cellar at that time?
Ans. One large ice-box like model AA.
Cross-int. 38. With reference to the entrance-door of the cellar, where was that situated?
Ans. On the left-hand side, in front of the fish box.
Cross-int. 39. Do you mean on the left-hand side of the cellar-door as you enter the cellar?
Ans. Yaw.
Cross-int. 40. How far from the door?
Ans. About eight or nine feet; I didn't measure.
Cross-int. 41. What else did you see in the cellar at that time besides the fish-box and ice-box?
Ans. An ice-mill, and a little box where they put the cracked ice in; this is all that I remember.
Cross-int. 42. How long was it after this that you repaired the big ice-box by stopping the holes, as you have stated?
Ans. It might have been two months and a half after that.
Cross-int. 43. How long, in fact, will you swear that it was?
Ans. About two months or two months and a half; I can't swear exactly.
Cross-int. 44. What enables you to swear that it was two months or two months and a half afterwards?
Ans. He judges from the time he worked in this place.
Cross-int. 45. Might it not have been six months or a year afterwards?
Ans. No.
Cross-int. 46. Did you make any charge of it in a book, or memorandum of it in any way?
Ans. No.
725 Cross-int. 47. Was any charge or memorandum made of it in the books of Smith, the man you worked for?
Ans. He thinks he must have a memorandum of it, as he received his pay as soon as it was done.
Cross-int. 48. How soon after you commenced to work for Smith was it that you done your first work for Racey?
Ans. About the first thing I did after I went to work for Smith?

Cross-int. 49. How long after that did you see the eel-tank in the cellar?

Ans. About fourteen days or three weeks.

Cross-int. 50. State whereabouts in the cellar did you see that eel-tank.

Ans. In the left-hand corner, going into the cellar.

Cross-int. 51. How are you enabled to say it was about fourteen days or three weeks after you did your first work for Racey, you first saw the eel-tank in the cellar?

Ans. It being the first work that I did for him, the boss went with me to show me what to do.

Cross-int. 52. At the time you first saw the eel-tank, what, if anything, was situated on the right-hand side of the door as you entered?

Ans. A small box that they used to crack ice in and an ice-mill.

Cross-int. 53. Was there anything else on that side of the cellar?

Ans. No, I did not see anything.

Cross-int. 54. What season of the year did you commence to work for Smith?

Ans. Four years ago in June.

Cross-int. 55. What month did you do your work for Racey?

Ans. In July, about this time four years ago.

Cross-int. 56. What month did you make your first repairs on large ice-box in the cellar?

Ans. About August, 1865.

Cross-int. 57. What year and what month did you next make your repairs on that ice-box?

Ans. I can't tell exactly.

Cross-int. 58. Please state as near as you can.

726 Ans. I can't tell; it was in the forenoon, but I don't remember the year, the month, or the day.

Cross-int. 59. About how long was it after you repaired the holes you have spoken of?

Ans. I can't tell exactly.

Cross-int. 60. Can't you approximate to it?

Ans. It might be three-quarters of a year; it might be a year.

Cross-int. 61. Please state as near as you can, according to your best recollection.

Ans. It might be three-quarters of a year, or a year.

Cross-int. 62. What was the work that you did three-quarters of a year, or a year, after the first work you did for Racey?

Ans. I cleaned out the box, and mended the pipe at the connection with the horizontal pipe, and mended the pipe at the seam on the other side.

Cross-int. 63. What year and month did you next do any work on that large ice-box?

Ans. Winter before last.

Cross-int. 64. In what month?

Ans. Some time after New Year's.

Cross-int. 65. State as near as you can.

Ans. I can't tell; it was after New Year's.

Cross-int. 66. Can't you state whether it was about a day, a month, or two months after New Year's?

Ans. Either the last of January or early part of February, 1868.

Cross-int. 67. Can you swear that it was not in the month of March?

Ans. I can swear it was not in March. It was in the latter part of January or early part of February.

Cross-int. 68. How are you enabled to swear that it was not in the month of March, but that it was in the latter part of January or early part of February? Please state all what circumstance or circumstances enable you thus to fix the date.

Ans. I know it, because it was cold and snowing.

727 Cross-int. 69. Is there any other circumstance that thus enables you to fix the date?

Ans. No.

Cross-int. 70. Did you ever know it to be cold and to snow in the month of March?

Ans. Yes.

Cross-int. 71. And you have known it to snow as late as the month of April, have you not?

Ans. Oh, yes, and in May.

Cross-int. 72. What was there in this large ice-box at the time you did the repairs last referred to?

Ans. Fish, that were all frozen up.

Cross-int. 73. Anything else?

Ans. Some little birds. They were dead, though.

Cross-int. 74. How long after this was the next time you made any repairs on that box?

Ans. It was in June or July. I tore the box out.

Cross-int. 75. Was it not after July that it was torn down?

Ans. I think not.

Cross-int. 76. Are you positive about that?

Ans. Yes, I am sure of it. I am positive.

Cross-int. 77. What makes you positive of it?

Ans. It was because Mr. Racey had another box made, and I knew that that new box was put up in August.

Cross-int. 78. How do you know that?

Ans. Because I took notice of the time.

Cross-int. 79. How came you to take notice of the time, and did you make any memorandum of it?

Ans. I know it, but I did not make any memorandum of it. I know it because I drank a good many quarts of beer on the head of it.

Cross-int. 80. Is there any other circumstance which enables you to state that the new one was put up in August, besides what you have mentioned?

Ans. I know it, also, because when the box was made it was

728 no good, and I had to take the box back again, and Mr. Racey went and got the box made some otherwheres.

Cross-int. 81. Now, don't you know it because Mr. Racey told you so?

Ans. Mr. Racey ordered me to make the box for him.

Cross-int. 82. You talked this matter over with Mr. Racey recently, have you not?

Ans. No, he has not talked it over with him, only when I took the box down a year ago Mr. Racey told me to take notice of the small pipes in the rear of the box, and told me to put my name on them, which I did.

Cross-int. 83. What did Mr. Racey ask you to put your name on, and what did you put it on?

Ans. Racey asked me to take particular notice, and put my name on the bottom of the horizontal pipes, and nothing else, only my name, on both the pans of the model.

Cross-int. 84. Where are those pipes now?

Ans. Some were broken up, and others were thrown on the dung-heap and taken away.

Cross-int. 85. When were they broken up and taken away?

Ans. Last winter. They were laying around the yard half a year. Mr. Racey wanted to use them at one time, but did not use them, and they were thrown away.

Cross-int. 86. Who tore down the wood-work of the large box?

Ans. I don't know.

Cross-int. 87. Did this large ice-box, which was torn down about a year ago, as you have stated, always occupy the same position in the cellar that it did when you first saw it?

Ans. Yes, in the same place until it was torn down.

Cross-int. 88. And that place, if I understand you, was on the left-hand side of the cellar, toward the rear as you enter the door of the cellar?

Ans. Yes, on the left-hand side of the cellar, as you go in the door, toward the rear.

Cross-int. 89. If it had been moved from one place to another in that cellar, after you first saw it, would you have noticed it?

729 Ans. Yes, I could notice it; I would have noticed it.

Cross-int. 90. Did you ever see any other box in that cellar besides the boxes you have named?

Ans. Yes, I saw a new box.

Cross-int. 91. When did you first see that?

Ans. It was in last August.

Cross-int. 92. Besides the new box you saw last August, and the other boxes you have named, did you ever see any other box in that cellar?

Ans. Yes, in the front of the cellar, on the right-hand side.

Cross-int. 93. When did you first see that?

Ans. I can't tell exactly. It might be two years ago.

Cross-int. 94. Did you have anything to do with the building of it?

Ans. No.

Cross-int. 95. Did you see it when it was being built?

Ans. No.

Cross-int. 96. Did you know when it was built?

Ans. No.

Cross-int. 97. On what occasion did you first see it?

Ans. In walking by the place I saw it.

Cross-int. 98. Did you ever do any repairs upon it?

Ans. Yes.

Cross-int. 99. Did you see the inside of it?

Ans. Yes.

Cross-int. 100. Did you observe any difference in the interior arrangement of this box from the one you tore down?

(Objected to, as not called for by anything in the direct examination, and therefore not open on the cross.)

Ans. Yes; the pipes were larger in that one than in the one torn down.

Cross-int. 101. What other difference did you observe, if any?

(Objection continued.)

Ans. Instead of the water running out in rear it ran out in front.

Cross-int. 102. What other differences did you observe?

Ans. None.

Cross-int. 103. How far from the bottom or top of the box was the outlet of the pipe from which the water ran?

730 (Objection continued.)

Ans. About a foot and a half from the floor of the cellar.

Cross-int. 104. At what point of the front side of that box did that drain-pipe pass through the side?

(Objection continued.)

Ans. There were two of them—one each side of the door.

Cross-int. 105. Did not these two drain-pipes pass through the side of the box about half way from the bottom of the box to its top?

(Objection continued.)

Ans. No. The pipes came through and bent down a little. I do not know they were inside.

Cross-int. 106. About how far above the bottom of the box did these two drain-pipes pass through the side?

(Objection continued.)

Ans. I cannot tell, as I did not take particular notice.

Cross-int. 107. Did they not pass through the side of the box above the lower edge of the door of the box?

(Objection continued.)

Ans. I did not take particular notice.

Cross-int. 108. Please state it, or indicate it as near as you can.

(Objection continued.)

Ans. Two pipes came, one on each side of the door; but the distance of these pipes from the lower edge of the door I cannot tell.

Cross-int. 109. Did they come through the side of the box above or below the lower edge of the door?

(Objection continued.)

Ans. I cannot tell.

Cross-int. 110. Were the perpendicular tubes in the inside of the box straight or tapering?

(Objection continued.)

Ans. They were small at the bottom, and larger than those in Exhibit AA, at the top.

Cross-int. 111. How many of them were there?

(Objection continued.)

731 Ans. Three on each side.

Cross-int. 112. How many horizontal tubes were there, if any?

(Objection continued.)

Ans. One on each side.

Cross-int. 113. Were the perpendicular tubes and horizontal tubes in this large box on the right-hand side of the cellar arranged in the same way, with reference to each other, as the perpendicular and horizontal tubes in the box which you tore down?

(Objection continued.)

Ans. The same, only that the water ran out in front.

Cross-int. 114. Were not the horizontal tubes in the box on the right-hand side of the cellar placed some distance above the bottom of the box?

(Objection continued.)

Ans. I think there was a piece of timber cut out in the shape of the pipe for the pipe to rest on.

Cross-int. 115. Were there not on each side of the box two horizontal tubes or pipes, having one on each side placed a short distance above the other?

(Objection continued.)

Ans. No, there was not.

Cross-int. 116. Were there not two horizontal tubes or pipes on each side of the box?

(Objection continued.)

Ans. There was one on each side, the same as Exhibit AA.

Cross-int. 117. Do you mean to swear that the perpendicular pipes were tapering in form in the box on the right-hand side, the same as the model produced here for your examination?

(Objection continued.)

Ans. Yes, the same as the model now before me.

Cross-int. 118. Was this box situated on the right-hand side of the cellar torn down last year?

(Objection continued.)

Ans. Yes.

Cross-int. 119. At the same time the other box was?

(Objection continued.)

732 Ans. No.

Cross-int. 120. When was it torn down?

(Objection continued.)

Ans. About September or October.

Cross-int. 121. Did you tear it down?

(Objection continued.)

Ans. No.

Cross-int. 122. Do you know who did?

(Objection continued.)

Ans. No.

Cross-int. 123. Do you know who did the metallic work in that box when it was put up?

(Objection continued.)

Ans. No.

Cross-int. 123. Do you know who did the metallic work in the box that you tore down?

(Objection continued.)

Ans. No.

Cross-int. 124. Have you not learned or heard who did that work?

(Objection continued.)

Ans. No.

Cross-int. 125. Who did the metallic work in the last one put up in the cellar, the one that is there now?

(Objection continued.)

Ans. I did it.

Cross-int. 126. Who did the metallic work in the other one that is there now.

(Objection continued.)

Ans. An Irishman; but I don't know who he is.

Cross-int. 127. When were you last in that cellar?

(Objection continued.)

Ans. Last November.

Cross-int. 128. Whereabouts in the cellar is the box that you say the Irishman put up?

(Objection continued.)

733 Ans. In the corner on the right-hand side as you enter the door.

Cross-int. 129. Where is the box situated in that cellar of which you did the metallic work?

(Objection continued.)

Ans. It stands in the old place, on the right-hand side as you go in the door.

Cross-int. 130. When was that put up?

(Objection continued.)

Ans. In January or February. I said, when I was asked when I was last in that cellar, that it was November. That is a mistake. It was in last January, or the commencement of February. Since that I have not been in the cellar.

Cross-int. 131. When you first saw the ice-box that you tore down did not the water flow out of it in the front side of it, that is, at the same side upon which the door is situated?

(Objection continued.)

Ans. From the back. The water poured out from the back.

Cross-int. 132. Was there more than one drain-pipe at that time to each horizontal tube of the box you tore down?

(Objection continued, and also as the question assumes that the witness has stated that there are two "drain"-pipes.)

Ans. There were two pipes on each side.

Cross-int. 133. Are you quite sure of that?

(Objection continued.)

Ans. Yes.

Cross-int. 134. At that time were there not collars or flanges on the perpendicular pipes of the box you tore down at the junction of those pipes with the pans at the top of the box?

Ans. It might be, but I don't know. I can't tell.

Cross-int. 135. Are there any collars or flanges at the tops of the perpendicular tubes in the model produced for your examination to-day?

Ans. No, there is none.

Cross-int. 136. Who made the wood-work of this model?

Ans. I don't know.

734 Cross-int. 137. Who has had possession of it since it was made?

Ans. I don't know.

Cross-int. 138. Did you put the metallic work into this model?

Ans. No.

Cross-int. 139. After you made the metallic work for this model did you give it immediately to Mr. Racey?

Ans. Yes, sir.

Cross-int. 140. How long did it take you to make the metallic work for this model?

Ans. Something over two days.

Cross-int. 141. When you first saw the ice-box that you tore down in the cellar, was there anything adjacent to it?

Ans. I saw nothing, only behind there was a fish-box.

Cross-int. 142. After you saw the eel-tank in the cellar, did you see anything between the eel-tank and the ice-box last referred to?

Ans. There was a bench, or small ladder, in the centre between the two, so as to get up into the eel-tank and put the ice into the box.

Cross-int. 143. Was there ever any alteration made in those steps or bench that you talk of?

Ans. I never saw anything.

Cross-int. 145. When you did the repairs you have spoken of to the ice-box you tore down, where were you when you performed the work?

Ans. I was down in the cellar working with the same "boss" I am working with now.

Cross-int. 146. Did you not do any part of the work in the shop of your boss?

Ans. Yes.

Cross-int. 147. What part of the work did you do in the shop?

Ans. I made six pieces of pipes.

Cross-int. 148. Did you take out of the box any of its parts at any one of the times that you repaired it? If yea, what?

Ans. I took nothing out.

Cross-int. 149. Did you do any soldering or repairing of the pans in the inside of the box that you tore down?

735 Ans. Yes; I did some repairing, and some soldering of the pan on the top.

Cross-int. 150. Have you not talked over with Mr. Racey what you were going to testify to here?

Ans. No; only Mr. Racey sent me a notice.

Cross-int. 151. Have you not talked with Mr. Racey about your testimony?

Ans. I did not.

Cross-int. 152. Have you not told him what you know about it?

Ans. No.

Cross-int. 153. Have you not talked with any one about your testimony to be given here?

Ans. No.

Cross-int. 154. Have you had no conversation with anybody about it before testifying?

Ans. No.

Cross-int. 156. Where did you do the metallic work of this model—in whose shop?

Ans. In Broome street; in Mr. Henry Smith's shop.

Cross-int. 157. How came you to make the metallic work for this model?

Ans. I did all the work for Mr. Racey; that is the way I come to do it.

Cross-int. 158. What is the name of the apprentice who helped you to tear down the ice-box?

Ans. Fritz Hessler.

Cross-int. 159. Is he at work for Mr. Henry Smith now?

Ans. No.

Cross-int. 160. Where is he?

Ans. I don't know.

Cross-int. 161. How long is it since you have seen him, and what was he doing then?

Ans. Two or three months ago; he was working as a tin-smith; I don't know with whom.

736 Cross-int. 162. The ice-box that you tore down stood close to the wall of the cellar, did it?

Ans. I can't tell exactly.

Cross-int. 163. Did it stand as close to the wall as the other ice-boxes stood?

Ans. I could not tell whether it stood close to the wall or not. I think it stood as close to the wall as the thickness of your hand.

Cross-int. 164. Then there was not room to walk between it and the wall it stood next to?

Ans. No.

Cross-int. 165. After you built a box for Mr. Racey, which did not suit him, as you stated, whom then did he employ to build one in the place you built?

Ans. It stands in the old place, on the right-hand side as you go in the door.

Cross-int. 130. When was that put up?

(Objection continued.)

Ans. In January or February. I said, when I was asked when I was last in that cellar, that it was November. That is a mistake. It was in last January, or the commencement of February. Since that I have not been in the cellar.

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(Objection continued.)

Ans. From the back. The water poured out from the back.

Cross-int. 132. Was there more than one drain-pipe at that time to each horizontal tube of the box you tore down?

(Objection continued, and also as the question assumes that the witness has stated that there are two "drain"-pipes.)

Ans. There were two pipes on each side.

Cross-int. 133. Are you quite sure of that?

(Objection continued.)

Ans. Yes.

Cross-int. 134. At that time were there not collars or flanges on the perpendicular pipes of the box you tore down at the junction of those pipes with the pans at the top of the box?

Ans. It might be, but I don't know. I can't tell.

Cross-int. 135. Are there any collars or flanges at the tops of the perpendicular tubes in the model produced for your examination to-day?

Ans. No, there is none.

Cross-int. 136. Who made the wood-work of this model?

Ans. I don't know.

734 Cross-int. 137. Who has had possession of it since it was made?

Ans. I don't know.

Cross-int. 138. Did you put the metallic work into this model?

Ans. No.

Cross-int. 139. After you made the metallic work for this model did you give it immediately to Mr. Racey?

Ans. Yes, sir.

Cross-int. 140. How long did it take you to make the metallic work for this model?

Ans. Something over two days.

Cross-int. 141. When you first saw the ice-box that you tore down in the cellar, was there anything adjacent to it?

Ans. I saw nothing, only behind there was a fish-box.

Cross-int. 142. After you saw the eel-tank in the cellar, did you see anything between the eel-tank and the ice-box last referred to?

Ans. There was a bench, or small ladder, in the centre between the two, so as to get up into the eel-tank and put the ice into the box.

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Ans. Yes.

Cross-int. 147. What part of the work did you do in the shop?

Ans. I made six pieces of pipes.

Cross-int. 148. Did you take out of the box any of its parts at any one of the times that you repaired it? If yea, what?

Ans. I took nothing out.

Cross-int. 149. Did you do any soldering or repairing of the pans in the inside of the box that you tore down?

735 Ans. Yes; I did some repairing, and some soldering of the pan on the top.

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Ans. No; only Mr. Racey sent me a notice.

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Ans. I did not.

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Ans. No.

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Ans. No.

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Ans. Fritz Hessler.

Cross-int. 159. Is he at work for Mr. Henry Smith now?

Ans. No.

Cross-int. 160. Where is he?

Ans. I don't know.

Cross-int. 161. How long is it since you have seen him, and what was he doing then?

Ans. Two or three months ago; he was working as a tin-smith; I don't know with whom.

736 Cross-int. 162. The ice-box that you tore down stood close to the wall of the cellar, did it?

Ans. I can't tell exactly.

Cross-int. 163. Did it stand as close to the wall as the other ice-boxes stood?

Ans. I could not tell whether it stood close to the wall or not. I think it stood as close to the wall as the thickness of your hand.

Cross-int. 164. Then there was not room to walk between it and the wall it stood next to?

Ans. No.

Cross-int. 165. After you built a box for Mr. Racey, which did not suit him, as you stated, whom then did he employ to build one in the place you built?

(Objected to, on the ground that it does not relate to anything called out on the direct examination, and therefore not open on the cross.)

Ans. An Irishman.

Cross-int. 166. Do you know where he works or does business?

(Objection continued.)

Ans. No.

Cross-int. 167. What was its size compared with the one you tore down?

(Same objection.)

Ans. The box was a great deal larger.

Cross-int. 168. Would not the length of time galvanized iron could be used in a box like that which you tore down, and used for the same purpose as used in that box, depend very much upon the care and management of it?

Ans. It depends a great deal upon the management and care. One box can last twenty years with good management.

Cross-int. 169. If carelessly used or badly managed, might it not rust or wear out in a very short time?

Ans. It would last ten or twelve years. It depends altogether on the quality of the galvanized iron. It would not rust out, if carelessly used, in a very short time.

Cross-int. 170. Suppose acids got into the pipes and pans, how long would it be before holes would be rusted in it?

737 Ans. In zinc you can put holes in half an hour; galvanized iron you can't rust with acids. In the course of time, when the galvanized surface is worn off and water kept constantly standing in it, it will rust out.

Cross-int. 171. When there is salt in the water, will it not increase the rusting of the iron?

Ans. Salt will increase the rust if the galvanized surface is worn out; but not if it is not worn out.

Cross-int. 172. If I understand you, then, as soon as the galvanized surface is worn off or removed in any way, the iron commences to rust?

Ans. As soon as the galvanized surface is worn out, the iron will commence to rust.

Cross-int. 173. And acids will then increase the rusting of the iron, will they not?

Ans. Yes, acids will increase the rust when the galvanized surface is worn off.

Cross-int. 174. And if the galvanized surface is removed in any other way, the iron will commence to rust just as readily?

Ans. Slowly.

Cross-int. 175. Was there any rust on the metallic work of this box that you tore down, at the time you repaired the horizontal pipes?

Ans. Not in the pipes, but inside, in the pans.

Cross-int. 176. When did you first see the rust on the pans?

Ans. When I went to fix it and put a piece on the inside of the pans.

Cross-int. 177. Did the piece you speak of go around both pans?

Ans. On one it went all round, and on the other only half.

Cross-int. 178. Did the piece you put on cover any portion of the bottom of the pans or only the side of the pans? and please state how much of the sides or bottom was covered.

Ans. It was only around the edge; one piece went entirely around one pan, and another round half of the other. The pieces were about a foot wide.

738 Re-examination:

Int. 179. You were asked, in the cross-examination, about a fish-box and an eel-tank. Was there at any time a fish-box and an eel-tank in the cellar, or but one of them?

(Previous objection made by complainant's counsel renewed.)

Ans. There was only one, all one.

Int. 180. When you speak of fish-box and eel-tank, you refer to one and the same thing, do you?

(Objection continued on all the grounds heretofore stated.)

Ans. I mean all one.

Int. 181. Please describe as nearly as you can the article you call fish-box, or eel-tank.

(Objection continued.)

Ans. The large box is lined with zinc; water is put into it, and eels when caught alive are put in there to keep. Mr. Racey and his employés put fish in there, and a turtle; he has thousands of eels there.

Int. 182. Did you ever see more than one such box or tank in that cellar?

(Objection continued.)

Ans. No; only one.

Recross, without waiving previous objections:

Cross-int. 183. Did you see the fish and eels in the box together?

(Objected to, as not responsive to anything called out in the examination.)

Ans. Yes.

Cross-int. 184. What kind of fish besides the eels did you see in the box?

(Same objection.)

Ans. Nothing but eels.

SEBASTIAN LÖFFALMAN.

(Adjourned to July 29, 1869, at 10 a. m.)

739 *Deposition of Charles Brower, taken, subscribed, and sworn to before John A. Shields, examiner.*

JULY 29, 1869.

Present, counsel for the respective parties.

CHARLES BROWER, being called as a witness on the part of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Charles Brower; my age is fifty; I reside at 13 Talman street, Brooklyn; I am a fisherman, at 306 and 307 Washington Market.

Int. 2. With what firm are you connected, if any, and how long have you been with them?

Ans. I have been with Justis D. Hiscock & Son for twenty years.

Int. 3. What part of the business, if any particular part, have you had charge of?

Ans. Doing the buying.

Int. 4. Are you, and have you been, acquainted for the last ten or twelve years with the kinds of fish usually offered for sale in the New York markets?

(Objected to as to form.)

Ans. Yes, sir.

Int. 5. Have you, in your capacity of buyer for the firm you have named, purchased artificially-frozen fish out of the season of their catch?

(Objected to as incompetent at this stage of the evidence in the case, not appearing to be in rebuttal to the evidence offered by the complainant in reply to the evidence previously offered by the respondents, but cumulative to the respondents' said evidence.)

740 Ans. I have.

Int. 6. Of whom did you first purchase such fish, and what kind of fish was it?

(Objection continued.)

Ans. The first I purchased was from the foreman of Mr. Joseph H. Racey, jr.; it was Spanish mackerel.

Int. 7. At the time you made this purchase, had you ever seen or known of any fish artificially frozen being offered or exposed for sale in the New York market?

(Objection continued.)

Ans. No, sir.

Int. 8. Did you afterwards purchase any artificially-frozen fish from Joseph H. Racey, jr.? If yea, what were they?

(Objection continued.)

Ans. Yes; Spanish mackerel; only the one kind I ever bought of Mr. Racey. Our business did not compel us to buy anything else there.

Int. 9. Do you know Middleton, Carman & Co., fish-dealers in Fulton Market, New York?

Ans. I do.

Int. 10. Did you know of their offering for sale frozen salmon out of the season of its catch?

(Objected to on the ground that no sufficient foundation has been laid for putting the inquiry.)

Ans. I have, of late years.

Int. 11. Did you purchase the Spanish mackerel of Mr. Racey's foreman, as stated in your previous answer, before or after you first knew or heard of Middleton, Carman & Co. having frozen salmon for sale?

(Objected to on all grounds previously stated.)

Ans. Before.

Int. 12. How long, or about how long, before was it?

(Same objection as to last inquiry.)

Ans. I should think somewhere in the neighborhood of ten years. I can't say positively, but it is somewhere in the neighbor-

741 hood of that time. I misunderstood the question. It was about four or five years before.

Int. 13. About how long ago from this time was it that you bought the Spanish mackerel of Mr. Racey?

(The same objections continued.)

Ans. I should say about ten years.

Int. 14. About how long ago did you last purchase Spanish mackerel of Mr. Racey?

(Same objections continued.)

Ans. I should think about seven years.

Cross-examined without waiving any objections heretofore taken to the testimony of the witness or any part thereof.

Cross-int. 15. What was the name of the foreman you have referred to?

Ans. I don't know his name; never did.

Cross-int. 16. Did you buy of that foreman more than once? If yea how many times?

Ans. Three or four, I think.

Cross-int. 17. When did you last buy of that foreman?

Ans. About seven years ago; it may be a little less or a little longer; somewhere in that neighborhood.

Cross-int. 18. And you first bought of him about ten years ago?

Ans. Yes, sir.

Cross-int. 19. Have you seen that foreman since?

Ans. I have.

Cross-int. 20. How lately?

Ans. I think I seen him to-day, if I am not mistaken.

Cross-int. 21. Where did you see him?

Ans. In Fulton Market.

Cross-int. 22. Was he at work there?

Ans. No, sir.

Cross-int. 23. If not, what was he doing there?

Ans. Purchasing fish.

Cross-int. 24. Do you know for whom he works now?

742 Ans. I think he works for Mr. Racey. I won't be certain.

Cross-int. 25. The several times that you purchased Spanish mackerel of that foreman occurred at intervals between the time you first purchased Spanish mackerel and the last time you purchased Spanish mackerel of him, did they not?

Ans. They did.

Cross-int. 26. And still you have never learned that foreman's name?

Ans. Never.

Cross-int. 27. Don't you know any part of his name?

Ans. Not a part of it.

Cross-int. 28. About how old a man is he?

Ans. I should judge the man to be about thirty-eight years of age; he may be forty.

Cross-int. 29. What did you call him when you addressed him?

Ans. I did not call him anything. He asked me if I wanted any mackerel.

Cross-int. 30. In what season of the year did you make these purchases?

Ans. Well, I should think somewhere along in October or November; somewhere there. It was out of the season.

Cross-int. 31. At what intervals of time did you make these purchases?

Ans. Between the first and second I think it was somewhere in the neighborhood of three years.

Cross-int. 32. Do I understand you to say that after you made your first purchase of Spanish mackerel, as stated, you did not make another for three years of Mr. Racey's foreman?

Ans. Not as I remember.

Cross-int. 33. When did you make your third purchase of that foreman?

Ans. Well, I should think it was within a space of twelve or fifteen days from the second.

Cross-int. 34. When did you make your fourth purchase?

Ans. I don't remember anything further than that.

Cross-int. 35. Do you mean to say that after the first purchase,

743 as stated, you made no other purchases for three years, of Spanish mackerel, from that foreman or from Mr. Racey's stand?

Ans. My answer is no; I did not purchase for three years. That is merely guessing at it.

Cross-int. 36. Why did you not purchase every year?

Ans. I had no occasion. Customers did not call for them.

Cross-int. 37. Did the mackerel first purchased by you, as stated, give entire satisfaction to your customers?

Ans. They did.

Cross-int. 38. How happened it, then, that there was no further call for them for three years?

Ans. That was their business, not mine.

Cross-int. 39. At what price did you sell those that you first purchased?

Ans. That is none of my business. I do not know what they sold for. I bought them, but did not sell them. They sold them for what they had a mind to.

Cross-int. 40. Did you not learn what price they sold them for?

Ans. I did not ask what they sold for.

Cross-int. 41. Did you not learn or hear what price they sold them for?

Ans. I don't know as I did ever hear.

Cross-int. 42. What did you pay for them?

Ans. Well, I think, if I am not mistaken, fifty cents a pound.

Cross-int. 43. Was the price the same each time of your purchase?

Ans. I can't say.

Cross-int. 44. Were the mackerel in a frozen state when you bought them?

Ans. They were.

Cross-int. 45. Were they in a frozen state when you received them?

Ans. They were; I received them as soon as I bought them.

Cross-int. 46. Where did you buy them?

Ans. The first and second lots at Fulton Market; and the third lot I bought at Fulton Market, but they were delivered at the stand of J. D. Hiscock & Co., from Mr. Racey's place of business.

744 Cross-int. 47. Did you take them from Mr. Racey's place of business to the stand of your firm?

Ans. No, sir; I stated before that they were delivered by one of his men.

Cross-int. 48. Did you or your firm pay cash down for them?

Ans. No, sir.

Cross-int. 49. Did you make an account of them on the books of your firm?

Ans. No, sir; I did not. I don't keep the books.

Cross-int. 50. Was there any account made of them on the books of your firm by any one?

Ans. There was.

Cross-int. 51. When did you last examine the accounts so made?

Ans. I never examined them. It is none of my business. They attend to that part themselves.

Cross-int. 52. Has your firm got the account-book or account-books now, in which the account was entered, in regard to those mackerel?

Ans. I don't think they have.

Cross-int. 53. What makes you think so?

Ans. Because we have no place to keep them.

Cross-int. 54. What has become of them?

Ans. Well, I suppose they have rotted before this time.

Cross-int. 55. Have you made any inquiry as to what has become of those books?

Ans. I have not.

Cross-int. 56. How far back has your firm got account-books that have not rotted?

Ans. That I could not say.

Cross-int. 57. Have you not any idea how long your firm keeps their account-books?

Ans. Well, they keep them till they are filled. That takes about a year.

Cross-int. 58. What do they then do with them?

Ans. Sometimes throw them under the stand; that is the last; they pay no attention to them; they have no more use of them.

745 Cross-int. 59. How do you know, then, but that the book or books containing the account of the Spanish mackerel purchased by you, as stated, are under that stand now?

Ans. I know they aint because once in a while I have to clean out old rotten books and clothes and throw them in the street.

Cross-int. 60. When did you last do that?

Ans. In March or April last, somewhere along there, I cleared out a lot of stuff and threw it in the street.

Cross-int. 61. Has any one made inquiry of you or your firm in regard to the account-books containing the account of those purchases of mackerel you have mentioned?

Ans. I don't think they have.

Cross-int. 62. Has not Mr. Racey?

Ans. No, sir.

Cross-int. 63. You have talked this matter over pretty fully with Mr. Racey, have you not?

Ans. No, sir; I don't think I have seen Mr. Racey in two or three years until to-day.

Cross-int. 64. Have you not talked it over with him to-day?

Ans. No, sir.

Cross-int. 65. Who asked you to come here as a witness?

Ans. I was summoned here, I don't know by whom.

Cross-int. 66. Who talked with you first about coming here as a witness?

Ans. I don't know as anybody did.

Cross-int. 67. Who first talked with you about testifying in this case?

Ans. Nobody ever talked to me about testifying in the case.

Cross-int. 68. Have you not talked with any one before this examination about any of the matters inquired about in your direct examination? If yea, whom?

Ans. I don't know as I have talked about it with anybody in particular.

Cross-int. 69. Whom have you talked with in general?

Ans. I have not talked with anybody in regard to the subject of coming here. I heard Carman talk about it, but I paid no atten-
746 tion to it. I have not talked in general with any one about this subject at all.

Cross-int. 70. Did you not know before you came here or understand on what subjects you were going to be examined, or some one subject?

Ans. I did not know I was coming here until I got that subpœna to-day.

Cross-int. 71. Is that all the answer you have to make to the question?

Ans. I believe it is.

Cross-int. 72. Has not any person asked you before your examination was commenced to-day some question or questions relative to some one of the matters inquired about in your direct-examination?

Ans. There may have been something of the kind said, but I did not pay much attention to it.

Cross-int. 73. Said by whom?

Ans. That gentleman there (Mr. Avery) said some word about it, but it was so light I did not pay any attention to it.

Cross-int. 74. And said by no one else?

Ans. I think I heard Mr. Hallstrom.

Cross-int. 75. When did he speak to you about it?

Ans. I should say a month, or two months ago; it may be less. I did not pay much attention to it. He did not speak to me in particular.

Cross-int. 76. When did he last speak to you about it?

Ans. Somewhere about the time mentioned.

Cross-int. 77. Has he spoken to you more than once about it?

Ans. I don't remember. He may have.

Cross-int. 78. Where were you when he spoke to you about it?

(Counsel for complainants objects to a discontinuance of the cross-examination of the witness at a quarter to one o'clock p. m., for the purpose of resuming the cross-examination of another witness, but asks that the cross-examination of the witness now on the stand be first finished.

747 The examiner rules that as there was an understanding at the adjournment on the 28th of July, 1869, that the cross-examination of Mr. Edward Blankman, a professional gentleman, a member of the bar, should be resumed on the 29th July, 1869, at 12 m., or soon after, and therefore directs the suspension of the cross-examination of the witness and the resumption of the cross-examination of Mr. Blankman, which is done at the request of Mr. Blankman himself.

Counsel for complainant is not aware of any such understanding, except that the cross-examination of Mr. Blankman should be resumed, if desired, at the close of the examination of any witness being examined at 12 o'clock, or thereafter.)

Ans. At my place of business.

Cross-int. 79. Was any one present when he spoke to you?

Ans. I suppose there was a dozen around there at the time.

Cross-int. 80. In hearing?

Ans. I suppose they were if they paid any attention to it. If they didn't, they didn't hear it.

Cross-int. 81. Did you observe whether they did or not?

Ans. It was none of my business whether they did or not, for I did not pay any attention.

Cross-int. 82. Is that all the answer you have to give to the question?

Ans. I believe that's all.

Cross-int. 83. What is Mr. Hallstrom's full name, and is he now present?

Ans. To tell you the truth, we always address him as the man who swallowed the whale. He is now present in the house. They call him Jonas Hallstrom. That is all I know about it.

Cross-int. 85. At the time he was speaking to you, did any one else join in the conversation with reference to the matter pertaining to the case?

Ans. Not to my knowledge.

Cross-int. 86. He is understood to represent the firm of Brown & Seavey, is he not?

Ans. Well, all I know is that if parties want anything from Boston, from them, I give him an order for it.

Cross-int. 87. When did you first hear of Middleton, Carman & Co. having any artificially-frozen salmon for sale?

748 Ans. I should judge, as near as I can tell, about the neighborhood of five years.

Cross-int. 88. How are you enabled to fix the time as being about five years ago?

Ans. I go by memory.

Cross-int. 89. Have you any memorandum, or is there any event or circumstance within your knowledge, which enables you to determine the time independent of your naked memory?

Ans. No, sir. There may be, or there may not, but I have none of it; other parties may for what I know.

Cross-int. 90. When was your attention first called to the date of their having frozen salmon for sale?

Ans. It was never called to any date in particular. It is the space of five years or thereabouts, last winter, as near as I can judge.

Cross-int. 91. Has your firm purchased frozen salmon of them?

Ans. Yes.

Cross-int. 92. During what period of time?

Ans. For the last space of five years, in the frozen-salmon season.

Cross-int. 93. Have your firm purchased frozen salmon from anybody else? If yea, from whom?

(Objection continued.)

Ans. Of Moon and Lamphier, Baker & Co., Henry C. Rogers & Co., Joseph Woolley & Co., Samuel B. Millar & Co., Brown and Seavey, and several others.

Cross-int. 94. Of what firm did you first purchase frozen salmon?

Ans. Well, I think of Middleton, Carman & Co.; I won't be certain.

Cross-int. 95. When did you first purchase frozen salmon of Brown & Seavey?

Ans. I can't say particularly. What I buy is for the firm. If they want an order from Boston, they attend to that themselves.

Cross-int. 96. When did you first learn or hear of your firm purchasing frozen salmon of Brown & Seavey? Please state as near as you can.

Ans. I suppose somewhere in the neighborhood of three or four years ago.

749 Cross-int. 97. How recently has your firm purchased frozen salmon of Brown & Seavey?

(Objected to as immaterial, irrelevant, and as not open on the cross-examination.)

Ans. Well, I think a year ago last fall. I won't be positive.

Cross-int. 98. Of whom has your firm purchased frozen salmon since then?

(Objection continued.)

Ans. Moon & Company, Baker & Co., H. C. Rogers & Co., and Middleton, Carman & Co.

Cross-int. 99. How long before your firm purchased frozen salmon of Middleton, Carman & Co., was it that you purchased the frozen mackerel you have spoken of?

Ans. Five years before.

Cross-int. 100. How are you able to fix the date as five years before?

Ans. By memory. By things occurring at my own house.

Cross-int. 101. Is there any memorandum, or event, or circumstance to which you refer to assist your memory in thus fixing the time?

Ans. (Referring to his forehead the witness says:) This has been my memorandum-book through life. There is a circumstance that fixes the matter in my memory. One year after I moved in the house that I had formerly occupied, I planted a grape-vine there. I had one or two of them mackerel left that we did not sell that fall, and it came into my mind that they were rich, and that I would put them around the grape-vine to make it grow. That is ten years ago last fall.

Cross-int. 102. What is ten years ago last fall?

Ans. Since I took them home.

Cross-int. 103. When did you move from the house spoken of?

Ans. Along in the last winter.

Cross-int. 104. And you lived in it the whole of the time prior to that since you first moved into it; is that so?

Ans. I told you so—eleven years and a few months. [It is the same question over again.]

750 (Portion of answer in brackets objected as not responsive to the interrogatory put to the witness.)

Cross-int. 105. In what month did you move from the house referred to?

Ans. I don't know that that question has got anything to do with what I came here for at all. It was in the month of October.

Cross-int. 106. Is the month of October in the winter season?

Ans. In the fall of the year.

Cross-int. 107. Then why did you say in a previous answer that it was in the winter season?

Ans. I consider that the winter season when a man has to put his coat on.

Cross-int. 108. Is the planting of the grape-vine the only circumstance that refreshes your memory with regard to the purchase of the frozen mackerel referred to?

Ans. My memory is sufficient. That is all I require, without any other circumstance.

Cross-int. 109. Did you place the mackerel that you carried home around the grape-vine the first year that was planted?

Ans. The first fall or winter after it was planted, whatever you may call it.

Cross-int. 110. How long did the grape-vine continue growing there?

Ans. I saw it there last night.

Cross-int. 111. Is your memory so good that you never make a mistake in matter of time or dates?

Ans. It very seldom occurs to me to make any mistake about anything that is in my business.

Cross-int. 112. So that you can go back for ten or eleven years, and state the time accurately of every business event occurring in your business, or that of [the] firm which you transacted?

Ans. I never said so. Not accurately, but within a space of a year or six months, on or about the time.

Cross-int. 113. And you are willing to swear, then, that you first purchased the frozen mackerel referred to by you ten years ago last fall?

751 Ans. I believe I have sworn to all I have said. I have taken my affidavit, and there is no more swearing.

Cross-int. 114. Is that all the answer you are able to make to the question?

Ans. I believe that is all that is required of me.

Cross-int. 115. Was it ten years ago last fall or not that you first purchased frozen mackerel of Mr. Racey's foreman?

Ans. Somewhere in that neighborhood.

Cross-int. 116. And you are willing to swear, also, that you first purchased frozen salmon of Middleton, Carman & Co. five years ago?

Ans. Or thereabouts.

Cross-int. 117. How much time do you cover by thereabouts?

Ans. Well, say three months.

Cross-int. 118. Will you swear that you did not purchase frozen salmon of Middleton, Carman & Co. more than six years ago?

Ans. I don't know; over five years to my knowledge. I have sworn to all I have said.

Cross-int. 119. Is that all the answer you are able to give to the question?

Ans. I decline giving any more answers on this subject to-day.

Cross-int. 120. Why do you decline to answer the questions put you?

Ans. Because I have stated all that I know on the subject.

Cross-int. 121. Are you as certain of the fact that you did not purchase frozen salmon of the firm of Middleton, Carman & Co. more than six years ago, as you are of any other fact you have stated in this examination?

(Objected to as to form, and as not a competent or proper question to be put.)

Ans. Not exceeding five years, as I said before.

Cross-int. 122. Has not your firm purchased frozen salmon of Middleton, Carman & Co. more than six years ago?

Ans. That I don't know anything about. They attend to their business in regard to what they purchase.

Cross-int. 123. Are you not the purchaser for the firm?

Ans. Not altogether.

752 Cross-int. 124. Is not that your principal business?

Ans. It is when they give me an order to do it.

Cross-int. 125. That is what they generally employ you to do, is it not?

Ans. It is.

Cross-int. 126. Did you buy all the frozen mackerel you spoke of, of one person—and he was Mr. Racey's foreman, was he?

Ans. He was.

Cross-int. 127. At whose stand did you make the two first purchases of frozen mackerel in Fulton Market?

Ans. Moon, Lamphier & Co.

Cross-int. 128. You are willing to state upon your oath, are you, that you never knew or heard of artificially frozen salmon to be exposed for sale in the New York markets more than six years ago?

Ans. Not more than five, to my knowledge.

Cross-int. 129. If more than five years ago your firm had had upon their stand artificially frozen salmon, or salmon that had been artificially frozen and thawed, would you have known it, or been likely to know it?

(Objected to as to form and substance, and upon all the grounds heretofore stated.)

Ans. I should have known it, and been likely to know it, for about every fish passes through my hands that our firm has on their stands.

his
CHARLES + BROWER.
mark.

(Adjourned to July 30, 1869, at 10 a. m.)

753 *Deposition of Joseph Davis, taken, subscribed, and sworn to before John A. Shields, examiner.*

JULY 30, 1869.

Present, counsel for the respective parties.

JOSEPH DAVIS, being called as a witness on the part of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Joseph Davis. My age, forty-two. I reside at Greenwich avenue. I am a printer. I do business at 633 Broadway, New York City.

Int. 2. Do you know Joseph H. Racey, jr., fish-dealer, Centre Market, New York City?

Ans. Yes.

Int. 3. How long have you known him?

Ans. About fifteen years.

Int. 4. Did you at any time do a job of work for him, or have one done for him, on his books of account?

(Objected to, as incompetent at this stage of the evidence in the case, it not appearing to be in rebuttal of the evidence offered by the complainant in reply to evidence offered by complainants, but cumulative to said evidence of respondents.)

Ans. I did.

Int. 5. State what it was you did, or caused to be done, as inquired of, and when it was, as nearly as you can.

(Same objection continued.)

Ans. In the latter part of 1864 I got some old books from Mr. Racey, took out the old insides, and refilled the same covers with new pages.

754 Int. 6. Do you remember how many books there were that you thus rebound?

(Same objection continued.)

Ans. I can state positively as to two; but my impression is that there were three or four.

Int. 7. Did you ever know of Mr. Racey's selling, or offering for sale, frozen fish at his stand in Centre Market out of the season of their catch?

(Same objection continued, and also objected to as to form.)

Ans. I did.

Int. 8. Do you know whether the fish thus offered were artificially frozen or not?

(Preceding objections continued.)

Ans. Nothing further than what I was told at the time.

Int. 9. Told by whom?

(Same objections continued.)

Ans. Mr. Racey.

Int. 10. What kind of frozen fish was it you saw thus exposed for sale, and at what season of the year did you see them?

(Same objections continued.)

Ans. The fish was striped bass. The season of the year I can t exactly state. But I know it was out of season—it was cold weather. I know it was out of season, because I asked my doctor if it was healthy to eat such fish.

Int. 11. About how long ago was it that you saw such fish exposed for sale at Mr. Racey's stand?

(Same objection continued.)

Ans. It must be about nine or ten years. I can't tell exactly which.

Int. 12. Did you purchase any such fish of Mr. Racey?

(Same objection continued.)

Ans. I did not, sir.

Int. 13. At the time that you saw them, state what, if anything, Mr. Racey said to you as to the manner of freezing them.

(Same objections continued, and further objected to for the reason that the statements of Mr. Racey to this witness are incompetent as evidence.)

755 Ans. He told me that as soon as caught, or as soon after as possible, they were hung up in an ice-house he had made, and that the ice-house was underneath his stand, down in the cellar.

Int. 14. When, if you remember, did he first tell you that?

(All preceding objections continued.)

Ans. About the same time as I stated before, about nine or ten years ago.

Cross-examination, without waiving any of the preceding objections:

Cross-int. 15. How many times did he tell you that?

Ans. I can't tell how many times, but it was repeatedly. We used to converse often on the subject.

Cross-int. 16. Please state about how many times, as near as you can.

Ans. It would be a matter of impossibility to say whether it was either five or twenty.

Cross-int. 17. During what period of time did they occur, first to last?

Ans. About five years.

Cross-int. 18. What year did you have the last conversation with him about it?

Ans. It must be about four years ago; when I discontinued working for Mr. Racey. I had no occasion to go down to the market.

Cross-int. 19. Have you not traded with him since?

Ans. I have not traded with Mr. Racey for eight years, except occasionally. Previous to that time I used to buy of him regularly. I was not trading with him at the time of the conversation referred to in the question.

Cross-int. 20. Did your first acquaintance with Mr. Racey commence with trading with him?

Ans. Yes.

Cross-int. 21. Where were you doing business then?

Ans. I was engaged as foreman in the printing-office of C. A. Alvord, Gold street, between John and Fulton.

756 Cross-int. 22. How long, and up to what date, were you engaged as foreman there?

Ans. I was with Mr. Alvord five or six years; I can't exactly remember the dates. It is ten or eleven years since I left him.

Cross-int. 23. Where did you remove to from Gold street?

Ans. I removed with Mr. Alvord from Gold street to Vandewater street. I still continued with him when he moved.

Cross-int. 24. How long did you continue in business at Vandewater street?

Ans. I don't think I was there more than a year.

Cross-int. 25. Where did you then remove to?

Ans. I went into business for myself, and started in Howard street, near Broadway.

Cross-int. 26. Were you employed by Mr. Alvord until you went into business for yourself in Howard street?

Ans. Yes.

Cross-int. 27. How long did you remain in business in Howard street?

Ans. Six months.

Cross-int. 28. Where did you then remove to?

Ans. Corner of Howard and Broadway.

Cross-int. 29. How long did you remain at the corner of Howard and Broadway?

Ans. A year and a half.

Cross-int. 30. Where did you remove to after that?

Ans. Broom' street, near Broadway.

Cross-int. 31. How long did you remain there?

Ans. I was not there over a year.

Cross-int. 32. Where did you remove to then?

Ans. 510 Broadway.

Cross-int. 33. How long did you remain there?

Ans. Three years.

Cross-int. 34. Where did you next remove to?

Ans. 49 Bleecker street.

Cross-int. 35. How long were you there?

Ans. Two years and a half.

757 Cross-int. 36. Where did you next remove?

Ans. My present location, 633 Broadway.

Cross-int. 37. What year was that?

Ans. The latter part of 1868; in September or October.

Cross-int. 38. Have you, during the intervening periods, since you became acquainted with Mr. Racey, seen anything of him; if yea, how often?

Ans. I have seen him repeatedly. It would be very difficult for me to say how often I have seen him since I first became acquainted with him. When I traded with Mr. Racey I used to see him two or three times a week. I used to buy in that market altogether. Since I have left off trading with him I have not seen him so repeatedly as I did before.

Cross-int. 39. About how often have you seen him during the past four years?

Ans. I should think not more than three or four times a year?

Cross-int. 40. You were perfectly friendly with him, were you not?

Ans. At all times.

Cross-int. 41. Did you generally speak with him when you met him?

Ans. Not always. Sometimes a mere nod in passing.

Cross-int. 42. He knew your name, did he not?

Ans. Certainly.

Cross-int. 43. Did you ever have a book-account with him?

Ans. No; I always paid cash.

Cross-int. 44. What were your last dealings with him?

Ans. Last year I bought a pair of ducks, in the latter part of the year—in the fall.

Cross-int. 45. When did you last do any work for him?

Ans. It must have been in 1865.

Cross-int. 46. When you first saw the frozen bass, as you have stated, did you have any talk with him about them then?

Ans. Yes.

Cross-int. 47. Who was present?

Ans. A large quantity of customers, but they were all strangers to me.

758 Cross-int. 48. Did they join in the conversation in regard to the bass?

Ans. I can't recollect now.

Cross-int. 49. Were any of Mr. Racey's employés present?

Ans. Yes.

Cross-int. 50. Who?

Ans. I don't know.

Cross-int. 51. Did you know the names of any of his clerks or employés while you traded with him regularly?

Ans. I did not. Mr. Racey generally waited on me himself.

Cross-int. 52. Did you not know the name of any person employed about Mr. Racey's stand while trading with him regularly?

Ans. I knew he had a brother there some part of the time?

Cross-int. 53. What was his name?

Ans. I don't know.

Cross-int. 54. Don't you know any part of his name?

Ans. No. I might have heard it at the time, but I don't know now whether it is Bill or Jack.

Cross-int. 55. You know he had a brother John or Jack?

Ans. No, I only mentioned those two names promiscuously.

Cross-int. 56. How lately have you seen any of the men that used to be employed about his stand?

Ans. July 29th was the last time I saw one of them.

Cross-int. 57. Whom did you see then?

Ans. Mr. Joseph H. Racey and his brother.

Cross-int. 58. Which brother?

Ans. I don't know which brother. I don't know how many brothers he has got.

Cross-int. 59. Did you see that brother about the stand during the time you traded with Mr. Joseph H. Racey, jr.?

Ans. Yes.

Cross-int. 60. How often?

Ans. I can't tell.

Cross-int. 61. Every day or week?

Ans. I can't tell.

759 Cross-int. 62. Did you see him occasionally about the stand until you ceased trading with Mr. Racey regularly?

Ans. Yes.

Cross-int. 63. Can't you give us any idea how often, whether it was once a week, or once a month, or whenever you were there buying goods?

Ans. It is impossible.

Cross-int. 64. Have you seen any other person recently that used to work about the stands when you were trading there regularly?

Ans. No.

Cross-int. 65. What did you see this brother doing at the stands?

Ans. Selling and cleaning fish.

Cross-int. 66. Were there any other hands employed that you know of, besides this brother, at the stands? If yea, how many?

Ans. I don't know of any other. I suppose there were others employed, but I had no business with them.

Cross-int. 67. Whereabouts at the stands did you first see the frozen bass that you spoke of?

Ans. Some hanging up in front of the stand and some on one end of the marble slab.

Cross-int. 68. How many did you see?

Ans. I never counted.

Cross-int. 69. Well, about how many? Give us some idea as to the quantity?

Ans. I can't give any idea as to the quantity.

Cross-int. 70. Was there more than one?

Ans. Yes, considerable.

Cross-int. 71. Were there more than half a dozen?

Ans. From the extent of the pile I should think there were, but I never counted.

Cross-int 72. How do you know they were frozen?

Ans. Because they looked like it.

Cross-int. 73. What appearance did they present to indicate to your mind that they were frozen?

Ans. They were stiff.

760 Cross-int. 74. Anything else?

Ans. No.

Cross-int. 75. Could you say they were frozen clear through, then?

Ans. I could not say. I never bought any.

Cross-int. 76. They might have been then but partially frozen, for aught you know, might they not?

Ans. They might. I am a judge of live fish, but not of dead ones.

Cross-int. 77. Did you take them in your hands and examine them?

Ans. No; as I did not want to buy any, I did not handle them.

Cross-int. 78. How do you know they were stiff then?

Ans. You can see when a fish is stiff without handling it.

Cross-int. 79. Suppose that they were only chilled with cold, but not frozen hard, would they not appear to be stiff?

Ans. I should not think they would have the appearance of a perfectly frozen fish.

Cross-int. 80. You say there were several customers present at that time. Were they apparently observing the frozen bass as well as you?

Ans. I do not know what the other customers did. I attended to my business and left.

Cross-int. 81. When did you next see frozen bass at those stands?

Ans. I saw them a second time. I can't tell when. I saw them two or three different seasons.

Cross-int. 82. Did you talk with Mr. Racey about them the next time you saw the frozen bass?

Ans. I don't know whether I spoke to Mr. Racey about them the first, second, or third time I saw them.

Cross-int. 83. When, then, did you talk to Mr. Racey about them, and where?

Ans. In Centre Market, either the first, second, or third time I saw them; I can't tell which.

761 Cross-int. 84. And was the third time the last time you saw them?

Ans. In my previous answers I did not mean to infer that I did not see them more than three times.

Cross-int. 85. How many times did you see them?

Ans. I can't tell. It has been out of my memory for the last eight or nine years.

Cross-int. 86. Did you see any frozen fish there the last year you traded with him regularly.

Ans. I did not.

Cross-int. 87. Did you see any frozen fish there during the year preceding the last year you traded with him regularly?

Ans. It is so long ago it is impossible for me to say.

Cross-int. 88. Did you have any talk with Mr. Racey about frozen fish during the last year you traded with him?

Ans. I have spoken to Mr. Racey about frozen fish repeatedly; but whether it was the first or last year I traded with him I cannot say.

Cross-int. 89. What did Mr. Racey say to you the second time you talked with him about frozen fish?

Ans. About the same as he did the first time.

Cross-int. 90. Were you looking at the frozen fish at the time of your second talk with Mr. Racey about the frozen fish?

Ans. I suppose they must have caught my eye.

Cross-int. 91. What did he say the third time that you and he talked about the frozen fish?

Ans. I suppose it must have been about the same as the first. I can't tell now. It was a matter in which I took no interest at all.

Cross-int. 92. And did he say about the same thing every time you talked with him about the frozen fish?

Ans. About the same thing.

Cross-int. 93. How came he to keep talking to you in this way about the frozen fish without any inquiry from you?

Ans. I did not say there was no inquiry from me. I might have asked him, and I think I did, how he came by the bass at this time of the year.

762 Cross-int. 94. Did you ask him that question every time you saw the frozen bass?

Ans. I don't know whether it was that question or something similar?

Cross-int. 95. Have you not stated this this "was a matter in which you took no interest at all?" How came you, then, making inquiries every time you saw the frozen bass?

Ans. I have stated that it was a matter in which I took no interest at all. By that I meant that it was not of sufficient interest, at the time or after, for me to charge my memory with anything appertaining to it; and that as there was an interval of a year, or about that, from one time to the other when I saw it, it was merely a casual question, without any reference to the former one.

Cross-int. 96. How came Mr. Racey to keep saying about the same thing to you about the frozen bass so frequently and repeatedly?

Ans. I have not said that he spoke to me frequently or repeatedly about it, in the general acceptation of the term.

Cross-int. 97. Have you not stated that you conversed with him often on that subject?

Ans. Often, but not repeatedly and frequently.

Cross-int. 98. Now state how you and Mr. Racey came to converse on that subject often, as stated by you.

Ans. The same answer as I gave before; I might have made inquiries about fish being there out of season.

Cross-int. 99. Did you have no curiosity to see the ice-house in which Mr. Racey kept his frozen fish?

Ans. None at all.

Cross-int. 100. And yet you and he kept conversing often about the frozen fish and ice-house?

Ans. By the repeated use of the term "often," it would seem to imply

that it was a subject in which I took a great interest, or that I made it my business, whenever I called on Mr. Racey, to make inquiries regarding it; whereas such is not the fact. Probably not more than once or twice during the time the bass was exposed was there anything said about it, and that only out of curiosity.

763 Cross int. 101. In what year did you first commence trading with Mr. Racey?

Ans. Between fourteen and fifteen years ago.

Cross-int. 102. Are you able to say, as a matter of memory, about which you cannot be mistaken, what particular year of your trading with Mr. Racey you first saw frozen bass on his stands?

Ans. I can't say definitely.

Cross-int. 103. Might it not have been the very last year of your trading with him regularly?

Ans. No, it might not have been, because I have stated that I saw them at two or three different seasons.

Cross-int. 104. Are you willing to swear to more than two different seasons?

Ans. I am now stating under oath to the best of my knowledge and belief. I have already stated that I cannot tell whether it was two or three seasons.

Cross-int. 105. It might, then, for aught you are able to say positively, have been that you saw the frozen bass during the last two seasons you were trading with Mr. Racey, might it not?

Ans. It might have been.

Cross-int. 106. Were you requested to remember the time when you first saw the frozen bass at Racey's stands?

Ans. No.

Cross-int. 107. Did you make any note or memorandum of it for the purpose of remembering it, or otherwise?

Ans. No.

Cross-int. 107. Did you have any conversation with Mr. Racey about it after you ceased trading with him regularly?

Ans. No.

Cross-int. 108. Has your attention ever been called to it since until now?

Ans. Not until this examination commenced.

Cross-int. 109. Have you done much work for Mr. Racey?

Ans. I did all he had to do at one time.

Cross-int. 110. From what time to what time did you do Mr. Racey's work?

764 Ans. I can't tell without reference to the book.

Cross-int. 111. Did you trade with him so long as you continued to do his work?

Ans. I traded with him during the period he gave me his work, and he gave me work after I had ceased trading with him.

Cross-int. 112. Did you cease trading with him before or after the alteration in the books you have spoken of?

Ans. I can't tell.

Cross-int. 113. What was the last job you did for him?

Ans. I must refer to my book before I can answer that question.

Cross-int. 114. When was it? Please state as near as you can.

Ans. It might have been in 1865.

Cross-int. 115. Did you do any work for him prior to your going into business for yourself?

Ans. No.

Cross-int. 116. Did you not commence to do work for him soon after that?

Ans. I think not; some time after. I can't state positively in the absence of my book.

Cross-int. 117. What became of the contents of the books Mr. Racey brought to you, if you know?

Ans. I presume my book-binder sold them as waste-paper among the rest of the rubbish.

Cross-int. 118. Did you ever do a similar job for him before or since?

Ans. Never before or since for him or anybody else.

Cross-int. 119. What were the names of the books he brought you?

Ans. I can't tell now.

Cross-int. 120. What kind of covers had they?

Ans. Regular account-book covers, but of a superior quality.

Cross-int. 121. What was their condition when brought to you?

Ans. Good condition.

Cross-int. 122. What kind of leather had the covers, if leather?

Ans. I give the same answer as I gave to question 120.

765 Cross-int. 123. How superior in quality were the covers to the regular account-book covers?

Ans. I infer they were superior in quality, from the fact that they must have been in use a long time, and still in perfect order when re-made over.

Cross-int. 124. Would it not have been as cheap, or cheaper, to purchase new account-books of the regular dealers than it would be to purchase new paper and have them rebound with the old covers?

Ans. No.

Cross-int. 125. How much would a party save in the case of two books—a ledger and journal, for instance?

Ans. It would depend upon the size of the ledger and journal.

Cross-int. 126. Suppose them to be of the same size as Mr. Racey's account-books?

Ans. It would save about one-half the cost.

Cross-int. 127. How are you enabled to fix the year when you made the alterations in his account-books?

Ans. From a bill in my possession where I paid a book-binder to make the alterations.

(Bill produced, and shown to and examined by counsel for the complainants.)

Cross-int. 128. What is the date as you find by your bill?

Ans. December 5, 1864, is the time the books were delivered to me completed.

Cross-int. 129. Are you positive, beyond any doubt, that the item in your bill relates to Mr. Racey's books?

Ans. I am positive.

Cross-int. 130. Where were you doing business at the time?

Ans. I think at 510 Broadway.

Cross-int. 131. Have you had any conversation with any one in regard to your testimony before your examination here to-day? If yea, with whom?

Ans. The day preceding this examination Mr. Racey asked me if I recollected the fact of rebinding the books, and that was all.

Cross-int. 132. Where was that conversation held?

Ans. In my office, 633 Broadway.

766 Cross-int. 133. Did you talk with any one else about it?

Ans. No.

Redirect

Int. 134. If I rightly understand your answers to the cross-interrogatories, they are to this effect: that you ceased trading regularly with Mr. Racey about eight years ago, and that before that time you saw the frozen bass exposed for sale on his stand. Am I right?

(Objected to, on the ground heretofore stated, and especially as grossly leading in form.)

Ans. Yes.

JOSEPH DAVIS.

Deposition of Richard Briggs, taken, subscribed, and sworn to before John A. Shields, examiner.

RICHARD BRIGGS, being called as a witness on the part of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Richard Briggs; my age is thirty-eight; I reside at 101 Ninth avenue; I am a fish-dealer in Washington Market. I am a partner in the firm of Parks & Briggs.

Int. 2. How long have you been in the fish-business?

Ans. Five years last May in the fresh-fish business, and before that in the salt-fish business—since 1852 or 1853.

Int. 3. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market?

Ans. Yes, sir.

Int. 4. How long have you known him?

Ans. I have known him since 1853.

767 Int. 5. Do you know his general reputation for truth and veracity?

Ans. Yes, sir. I know it to be good.

Cross-examined:

Cross-int. 6. Whom have you heard speak of it?

Ans. Well, I can't name those I have heard speak of it, but what I have heard spoken of him has been good.

Cross-int. 7. Cannot you give the name of a single person that you have heard speak of it?

Ans. No, I don't know as I can.

Cross-int. 8. Will you swear that you ever heard any one person speak of it?

Ans. No, I don't think I can.

Cross-int. 9. How have you been connected with Mr. Racey since you have been acquainted with him?

Ans. I sold him fish.

Cross-int. 10. Does he buy of you at the present time?

Ans. No.

Cross-int. 11. When did he cease buying of you, or your firm?

Ans. It was in the salt-fish business he bought fish of me, and he ceased buying of me when I went out of that business. That is about five years ago or more.

Cross-int. 12. Have you not traded with him in any way since?

Ans. No, sir.

Cross-int. 13. Have you had any dealings with him since?

Ans. No, sir.

Cross-int. 14. During what period of time did you trade with him?

Ans. From 1853 up to the time I went out of the salt-fish business.

Cross-int. 15. Was Mr. Racey's character for truthfulness and veracity ever a subject of conversation between you and anybody else?

Ans. No.

Cross-int. 16. Did you ever learn or hear of his being insolvent?

768 (Objected to as immaterial, and not open on cross-examination.)

Ans. No, sir.

Cross-int. 17. Did you ever learn or hear of the property at the stands in Centre Market, now occupied by him, being out of his hands at any time?

(Same objection continued.)

Ans. No, sir.

Cross-int. 18. Did you ever learn or hear of the business at those stands being carried on in the name of his brother, William H. Racey?

(Same objection continued.)

Ans. No, sir.

Cross-int. 19. Did you trade with him during the years 1859, 1860, '61, '62, and '63?

Ans. To the best of my knowledge he did buy some stuff of me during that time.

Cross-int. 20. And you never heard of any embarrassment or trouble on his part in the payment of his bills?

(Same objection continued.)

Ans. No, sir.

Cross-int. 21. You never learned or heard of any litigation about the personal property at Mr. Racey's stands, or used in connection therewith?

(Same objection continued.)

Ans. No.

Cross-int. 22. You never meddled with or took any interest in his affairs, except to sell him goods and get your pay?

(Objection continued.)

Ans. I did not meddle with his affairs, only to sell him goods and get my money.

Cross-int. 23. You never made inquiries from different persons as to his character for truth and veracity, did you?

Ans. No.

Cross-int. 24. If I understand you, then, all you mean to say is substantially that you have traded with Mr. Racey, in the way you

769 have stated, from 1853 until you ceased dealing in salt fish, and never had any trouble with him in your business; is it not?

Ans. No, sir; no trouble with him.

Cross-int. 25. Do you mean to say anything more than this, that you have known Mr. Racey since 1853, and have traded with him by selling him goods such as you dealt in, from 1853 until you ceased dealing in salt fish, and never had any trouble with Mr. Racey in your business?

(Objection as to form of the question, and as stating counsel's own construction of the witness's testimony, and as argumentative.)

Ans. No, sir; never had no trouble with him in business.

Cross-int. 26. That is all you mean to say in the matter, is it?

(Objection continued.)

Ans. Yes, sir.

RICHARD BRIGGS.

Deposition of Edmon Blankman, taken, subscribed, and sworn to before Kenneth G. White, examiner.

EDMON BLANKMAN, being called as a witness on behalf of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Edmon Blankman; my age is thirty-nine; I reside at 48 West Thirty-eighth street, New York City; I am a member of the bar.

Int. 2. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market? If yea, how long have you known him?

Ans. I know Joseph H. Racey, jr. I have known him for about twelve years; perhaps longer.

Int. 3. Were you at any time in a cellar in Centre Market, New York City, occupied by Joseph H. Racey, jr.? If yea, when first, as nearly as you can recollect?

770 Ans. Yes, I think in the year 1860. That is my best belief and best recollection.

Int. 4. Do you know whether or not it is the same cellar now occupied by said Racey? Give the location of the market, if you can.

Ans. It is on the west side of the market, between Broome and Grand streets, I believe. I am unable to say that it is the same cellar now occupied by Racey, as I have not been there for some time.

Int. 5. Please state what you saw, if anything, in that cellar when you visited it in 1860?

(Objected to as incompetent at this stage of the evidence in the case, it not appearing to be in rebuttal to the evidence offered by the complainant, in reply to evidence offered by complainants, but cumulative to said evidence of respondents.)

Ans. I saw an apparatus by which he kept his Spanish mackerel, quail, partridges, and other things that I don't now recollect.

Int. 6. Did you look inside of that apparatus? and, if so, describe it, as near as you can.

(Objection continued.)

Ans. I looked inside of it; Mr. Racey showed it to me. He took the Spanish mackerel, quail, and partridge out and sent some to my house, and they tasted very nice, though they were out of season. I saw that it was a freezer. The objects that he took out were cold, and I knew that he could not have got them without preserving, because they were out of season. I saw at a glance that it was a freezer.

Int. 7. Did you observe the pipes that you saw in the chamber sufficiently to describe their position?

(Objection continued, and further objected to as leading in form.)

Ans. I observed the pipes, and he (Mr. Racey) described the operation of them to me; but it is so long ago that I could not pretend to give a description of them.

Int. 8. Did Mr. Racey state to you, when describing the apparatus, the use to which he put it, or intended to put it?

(Objection continued on all the grounds previously stated, and further objected to on the ground that the statements of Mr. Racey to this witness are not competent as evidence.)

771 Ans. Yes. My present recollection is that he dwelt particularly on Spanish mackerel, quail, and partridge out of season; and I had practical illustration of the fact, as I ate the game and fish that came out of the apparatus several times.

Int. 9. What, if anything, did he say in which he preserved animal substances in it, and whether or not anything was said about freezing?

(Same objections continued.)

Ans. I have no recollection of that, but I know it was talked over. I asked him how long these things would keep, and he said just as long as you keep them in the freezer.

Int. 10. Did you observe the temperature inside the freezer?

(Same objections continued.)

Ans. I knew it was cold, but I did not look at the thermometer to tell the degree of cold.

Int. 11. Did you observe the condition of the articles taken out as to being frozen or unfrozen?

(Same objections continued.)

Ans. If I did, I don't recollect it now.

Int. 12. Do you know the general reputation of Joseph H. Racey, jr., for truth and veracity?

Ans. Yes.

Int. 13. What is it?

Ans. Good, sir.

Cross-examined, without waiving any objections heretofore made:

Cross-int. 14. Did you ever hear his character for truth and veracity discussed?

Ans. Except among his friends and acquaintances when spoken of.

Cross-int. 15. How many times?

Ans. I could not give the number of times, I have known him so many years. I have frequently heard him spoken of as a most excellent provider for his mother and father.

772 Cross-int. 16. How many times have you heard his character for truth and veracity spoken of? State as near as you can.

Ans. I cannot tell the number of times, but I have frequently heard him spoken of as a good and truthful man, and as a good and affectionate son to his mother and father, and as a kind brother to his sisters and his brothers.

Cross-int. 17. Whom have you heard speak of it in that way?

Ans. I have heard his sisters, brothers, father, mother, and people who are strangers, Mr. Martinez, Mr. Michaelis—[well, a great many others whose names I cannot recollect. I never heard anybody speak badly of him in my life. All whom I have heard speak of him spoke well of Mr. Racey; and I would believe him under oath, or I would believe him on his word as quick as any man I ever knew.]

(That portion of the answer included in brackets objected to as not being responsive to the question put.)

Cross-int. 18. You have heard, then, Mr. Racey's character for truth and veracity discussed by different persons at different times, have you not?

(Objected to as pretending to state that which the witness has not stated.)

Ans. Not other than in a general way, as I have already stated, as a good, honest man; a good, kind son to his father and mother, and an affectionate brother to his sisters and to his brothers.

Cross-int. 19. Have you ever heard any one person speak of his character for truth and veracity in any way? If yea, give his name.

Ans. I never heard it impeached, never heard anything against it; and a great many people have spoken with me relative to his general reputation, and always spoke of him as an honest, upright man.

Cross-int. 20. I do not see that you have answered the question put to you, which relates exclusively to what you have heard said in regard to his character for truthfulness, and does not relate to his character as an affectionate brother and son.

Ans. I have stated that those who spoke of Mr. Racey spoke of him as an honest and upright man, both in business and socially;
773 and I can't conceive how a man can be honest and upright both in public and private life unless he is a truthful man.

Cross-int. 21. How many times have you heard Mr. Martinez speak of him?

Ans. Dozens of times.

Cross-int. 22. What did Mr. Martinez say at any one time of Mr. Racey's character for truthfulness?

Ans. Mr. Martinez said he could always place implicit reliance on what Mr. Racey said in matters of business, and the honorable way in which Mr. Racey treated him.

Cross-int. 23. How many times did he say that to you?

Ans. It was a theme of frequent discussion.

Cross-int. 24. Please state about how many times to you.

Ans. In substance, he stated them times innumerable.

Cross-int. 25. Did you at any one of these times dispute what he stated, or did you endorse it?

Ans. I endorsed it, and acquiesced in what he said, because I knew Mr. Racey to be a good man.

Cross-int. 26. How came he repeating this to you, when you did not dispute it, and you both agreed as to Mr. Racey's character?

Ans. I could assign no reason other than that Mr. Martinez liked to talk about the man because he liked him, and he knew I knew Mr. Racey.

Cross-int. 27. So then, about every time he met you and dined with you, or otherwise, he persisted in repeating to you, substantially, that he could always place implicit reliance on what Mr. Racey said in matters of business, and the honorable way in which Mr. Racey treated him, did he not?

Ans. I have not said that he dined with me, or that every time he met me he spoke of Mr. Racey.

Cross-int. 28. But have you not stated what was recited in the last question substantially as said by Mr. Martinez in regard to Mr. Racey to have been said by him innumerable times to you?

Ans. Yes, but not every day. I said that he stated so to me innumerable times.

774 Cross-int. 29. What is Mr. Martinez' full name, and where is his place of business?

Ans. I don't know his full name. His place of business was the Maison Doree, Fourteenth street.

Cross-int. 30. He traded with Mr. Racey, did he?

Ans. He said to me he did.

Cross-int. 31. How many times did you hear Mr. Michaelis speak of Mr. Racey's character for truthfulness?

Ans. I never heard him speak about Mr. Racey's character for truthfulness, except Mr. Racey's character generally.

Cross-int. 32. How many times did you hear him so speak? State as near as you can.

Ans. I can't state how many times. I have been frequently in his store, and heard him speak of Mr. Racey.

Cross-int. 33. What did he say of Mr. Racey's character at any one time?

Ans. That he considered him an honest and correct man, and that Mr. Racey dealt with him. [I know that, at one time, Mr. Michaelis, or the firm, sent him a beautiful case to hold cigars as a New-Year's gift.]

(That part of the answer included in brackets objected to as not responsive.)

Cross-int. 34. How many times did he say that to you? Please state as nearly as you can.

Ans. I can't state other than I have stated—that I don't recollect. I have been frequently in his store, and he has spoken highly of him, both he and the gentleman connected with his store.

Cross-int. 35. Did you disagree with the statements of the gentleman as to Mr. Racey's character at any time?

Ans. Not at all.

Cross-int. 36. What was the occasion of frequently speaking of it in that way, then, if there was no dispute about it between you?

Ans. I could not assign any reason, other than that they would converse about Mr. Racey and bring his name up, and they would cite him as a model of a good man, and I considered him a good man.

775 Cross-int. 37. You are a good friend of his, were you not?

Ans. Yes, because I considered him a good man.

Cross-int. 38. Were you an associate of his in any way?

Ans. Yes.

Cross-int. 39. Did you never hear anything against him

Ans. No.

Cross-int. 40. How were you associated with him?

Ans. He was my friend, and he is yet, and I am his. I have dealt with him for years, always found him honest, correct, very charitable, and a good, honest citizen. He has visited me, and I have visited him.

Cross-int. 41. Your families visit each other, do they not?

Ans. I have no family except a little girl and my wife.

Cross-int. 42. Has your wife visited his house, and has his wife visited yours?

Ans. No, sir.

Cross-int. 43. Are you connected in any way, by marriage or otherwise?

Ans. No.

Cross-int. 44. Do you belong to the same club or association of any kind?

Ans. I never belonged to any club in my life. I pass my evenings with my wife and child.

Cross-int. 45. Do you know whether he is married or not?

Ans. Yes, sir, I know he is married.

Cross-int. 46. Has he been married more than once?

(Objected to, on the ground that it is not responsive to anything called out on the direct, and therefore not open on the cross.)

Ans. Not to my knowledge. The only person I ever knew as his wife is the present Mrs. Racey.

Cross-int. 47. How long have you been acquainted with her?

(Same objection.)

Ans. I have been acquainted with Mrs. Racey a couple of years.

Cross-int. 48. Do you know what her name was before her alleged marriage to him?

776 (Objection continued, and also objected to as being irrelevant and immaterial, and impertinent in form.)

Ans. No, I never asked; I don't think the subject was ever presented to me.

Cross-int. 49. Do you know when he was married?

(Same objection.)

Ans. No, I have no record of it. I could not tell you.

Cross-int. 50. Were you present at the marriage, or have you any knowledge of about the time he was married?

(Same objection.)

Ans. I was not present at the marriage, nor have I personal knowledge of the time.

Cross-int. 51. Did you learn or hear about it at the time it occurred?

(Objection as before, and also because it calls for hearsay testimony.)

Ans. Only from hearsay.

Cross-int. 52. About how long ago was that?

(Objection continued.)

Ans. I could not tell the time; it must be three years ago, and perhaps more.

Cross-int. 53. Was not her name Amanda Parker?

(Objection continued.)

Ans. I don't know, sir.

Cross-int. 54. Did you never hear that it was?

Ans. I never heard her name at all, except as Mrs. Racey.

Cross-int. 55. Did you never hear of his living with her quite a long time before he was married to her?

(Objection continued, and further objected to as being willfully scandalous.)

Ans. Oh, no, I never heard of any such thing. She is Mr. Racey's wife, and that is an answer to anything like that.

Cross-int. 57. Have you ever known or heard of Mr. Racey being bankrupt or insolvent?

(Objection renewed as stated to interrogatory 48.)

777 Ans. I know Mr. Racey owed debts, and that he worked and toiled until he got money enough to pay his debts, and many of the debts were outlawed by the statutes of our State, but he paid every dollar of them, saying that although barred by the statute of limitation it made no difference to him. He was not insolvent; he merely had an extension by reason of his poverty.

Cross-int. 58. Have you not learned or heard that in 1853 or thereabouts Mr. Racey was examined on supplementary proceedings, after execution against him, and disclosed no property, and from that time until the beginning of 1854, or thereabouts, was insolvent?

(Objection continued, and further objected to, as it calls for hearsay testimony, as well as the contents of judicial records not produced.)

Ans. No.

Cross-int. 59. Did you never learn or hear that Mr. Racey lost his property, became insolvent, and was obliged to have his business carried on at his stands in Centre Market, for several years, in the name of his brother, William H. Racey?

(Objection continued.)

Ans. No.

Cross-int. 60. Did you never learn or hear that Mr. Racey became thus insolvent from being fast in his habits, and habituated to gambling?

(Same objection.)

Ans. No, sir.

Cross-int. 61. Did you never learn or hear of his being indicted for larceny or embezzlement in this city?

(Same objection.)

Ans. No, sir.

Cross-int. 62. How do you know Mr. Racey paid all his debts, whether barred by the statute of limitations or not?

(Same objection.)

Ans. I know it, as his agent, attorney, or friend; I never charged him any fee for it. He gave me a memoranda of the debts; I put in what is called a requisition in the clerk's office for judgments, and discharged the debts by paying them.

Cross-int. 63. Did you ever see any of his books of account?

(Objection continued, on all the grounds heretofore stated.)

778 Ans. I have seen them, but I have never examined them.

Cross-int. 64. When did you do what you have stated in answer to question 62?

Ans. I don't recollect the year. A couple of years ago it was finished. The debts were not all paid at one time.

Cross-int. 65. Are you able to say, as a matter of personal knowledge, that all Mr. Racey's debts were paid up, when your business with him in that matter was finished, as stated?

(Same objection.)

Ans. No, only what I have already stated, that he gave me a memoranda of what he owed, and who he owed to, and then the return to the requisition, and they were paid up.

Cross-int. 66. If I understand you, all you know about Mr. Racey's debts is from what he told you?

(Objection continued.)

Ans. No, sir; I said nothing of the kind. I told you that I made a requisition for judgments against him, and the requisition was returned, and that was my guide as well as his memoranda. I should take Mr. Racey's word for everything he said, because I know him to be a truthful man.

Cross-int. 67. Did you never learn or hear of Mr. Racey's character for truth and veracity being impeached at a trial in court?

Ans. No, sir.

Cross-int. 68. Did you ever know or hear anything about the action of Malcolm, receiver, against William H. Racey?

(All the objections heretofore taken are made to this question.)

Ans. No, sir.

Cross-int. 69. When did you first act as counsel for Mr. Racey?

Ans. About nine years ago.

Cross-int. 70. Have you acted for him as counsel more or less since?

Ans. Only in matters of advice, but he has had no business worth mentioning.

Cross-int. 71. What was the name of the first case in which you first acted as counsel for him?

(All objections heretofore made are made to this question.)

779 Ans. I cannot tell you the name, but I can tell you the subject. Mr. Racey was the plaintiff.

Cross-int. 72. Was it a case in court, and did it come to a trial?

(Objection continued.)

Ans. It did not come to a trial. The defendant interposed no defense and it was amicably settled.

Cross-int. 73. Was the case entered in court?

(Objection continued.)

Ans. There was a complaint and summons, but the case being amicably settled, it was never put on the calendar of the court. That is my present recollection.

Cross-int. 74. Please state in what year that occurred.

(Objection continued.)

Ans. In 1860 or 1861.

Cross-int. 75. Will you please state how many times you have seen Mr. Racey's books of account?

(Objection continued.)

Ans. I have stated that I have seen them in Mr. Racey's little counting-house, but I never have looked into them.

Cross-int. 76. How many times have you visited the cellar you have spoken of?

Ans. Not often. I remember him inviting me down there for the first time in 1860.

Cross-int. 77. When were you last in the cellar?

Ans. 1863, I guess it was.

Cross-int. 78. When you first visited the cellar, what else did you see there besides the freezer?

Ans. I guess Mr. Racey kept a great many things there. It was only light when you opened the door, and I did not examine the place.

Cross-int. 79. State what you saw the first time you were in the cellar.

Ans. I saw what he called his freezer. I don't think I saw what he called the eel-aquarium until 1863.

Cross-int. 80. Did you go down into the cellar the first time you were there?

780 Ans. I was in the cellar, and I had to go down steps to get there.

Cross-int. 81. How long did you remain in the cellar? State as nearly as you can.

Ans. Only a very short time, sir. Not more than five minutes.

Cross-int. 82. How long after your first visit was your second visit to the cellar?

Ans. I think it was in 1863.

Cross-int. 83. How long did you remain in the cellar then?

Ans. It was longer than the first time, because I was amused with the aquarium in which he kept his eels. I did not go down to look at anything but that.

Cross-int. 84. How long after your second visit was your third visit to the cellar?

Ans. I did not speak of any third visit, sir. I spoke of but two visits, one in 1860 and one in 1863, as I now recollect.

Cross-int. 85. Did you never visit that cellar but twice?

Ans. Not to my present recollection.

(Adjourned to July 29, 1869, at 10 a. m.)

JULY 29, 1869.

Cross-int. 86. What was the occasion of your visiting the cellar spoken of the second time?

Ans. To look at the aquarium for eels, or eel-tank.

Cross-int. 87. Did you see any other fish in the tank besides eels?

Ans. No; the eels that I saw were alive, swimming in the water.

Cross-int. 88. In what season of the year was it?

Ans. It was in cold weather; it may have been early in spring, or late in the fall; at all events it was in cold weather.

Cross-int. 89. Please describe the eel-tank, and its situation in the cellar.

Ans. It was about four feet or four and a half feet high; it was pretty wide, probably about five feet wide; it was, I believe, longer
781 than it was wide. As you enter the door of the cellar, I think it stood directly back of the freezer. That is my present recollection, but I may be in error.

Cross-int. 90. Which was the longer, the ice-box or the eel-tank?

Ans. I don't know; I did not measure it.

Cross-int. 91. Did the eel-tank extend farther towards the centre of the cellar, or beyond it, than the freezer, so that you, standing in the centre of the cellar, could see the eel-tank extending towards the right-hand side of the cellar beyond the edge of the freezer?

Ans. I could not tell. The freezer stood a little towards the left as you went in. That is my present impression.

Cross-int. 92. Did the freezer stand near the wall of the cellar?

Ans. I don't know. There are four walls to the cellar; it stood nearer the left wall as you went into the cellar. Going into the cellar, I passed to the right of the freezer to get to the eel-tank.

Cross-int. 93. Was there sufficient space between the freezer and the wall on the left-hand side of the cellar for you to pass to the eel-tank?

Ans. I have already stated that I passed to the right. I do not pretend to say that there was or that there was not space on the left, because I do not know anything about it. It never occurred to me to examine it.

Cross-int. 95. Did you examine the freezer at that time?

Ans. I did not.

Cross-int. 96. What else did you see in the cellar?

Ans. No; I have no recollection of what I saw. I merely went to look at the eels by invitation of Mr. Racey.

Cross-int. 97. Was the eel-tank something new there, or was it an old tank?

Ans. I do not know whether it was new or old. I had never seen it before, and I have not seen it since.

Cross-int. 98. How much space was there between the eel-tank and the freezer?

Ans. I don't know.

Cross-int. 99. About how much?

782 Ans. I have no idea. I only know I went to the right to the eel-tank; Mr. Racey held a candle. I do not know whether there was or was not space.

Cross-int. 100. When you looked into the eel-tank did you stand between the eel-tank and the freezer?

Ans. No, I think not.

Cross-int. 101. On which side of the eel-tank did you stand?

Ans. I believe that I stood on the south side.

Cross-int. 102. Where did Mr. Racey stand while showing it to you?

Ans. Near me, as I have described. He went ahead with the light, and I think he must have stood on my right.

Cross-int. 103. On which side of the eel-tank did he stand?

Ans. On the same side that I did.

Cross-int. 104. Did you observe any space between the eel-tank and the freezer, or did they stand close together?

Ans. I have already answered that question, that I have no recollection of it. There may have been a space and there may have not been. I have no recollection at all on the subject.

Cross-int. 105. Did you see any steps there near the eel-tank?

Ans. I have no recollection other than the steps going down to the cellar.

Cross-int. 106. Did you see any platform near the eel-tank?

Ans. Not that I recollect.

Cross-int. 107. Did you see any platform near the freezer?

Ans. I have no recollection of seeing any steps at all in the cellar or platform, except the steps leading down to the cellar.

Cross-int. 108. Did the eel-tank stand against or close to the left-hand wall of the cellar, as you enter it?

Ans. I could not say it was against, but it stood close to it.

Cross-int. 109. What makes you say that it was in 1863 that you first saw the eel-tank?

Ans. Because I believe it was in 1863, and that is my best recollection, and I am not positive as to that.

Cross-int. 110. What makes you believe it was in 1863?

Ans. In 1862 I was in the Gulf, in the service of the United
783 States, on board the United States ship Connecticut, and did not leave the service until late in November of that year, and it was after that.

Cross-int. 111. Have you any other means of fixing the date?

Ans. I have no other means, and my best recollection is that it was in 1863.

Cross-int. 112. Might it not have been later than 1863?

Ans. I think not.

Cross-int. 113. Why not?

Ans. Because it is my mind that it was in cold weather in 1863.

Cross-int. 114. Did you give particular thought to it at the time with reference to remembering when it was.

Ans. No, I did not.

Cross-int. 115. Were you requested to remember it?

Ans. No, sir.

Cross-int. 116. Was any one present with you besides Mr. Racey at that visit?

Ans. I think not.

Cross-int. 117. Did you make any note or memorandum of it?

Ans. No.

Cross-int. 118. When was your attention first called to it with reference to recollecting when it was?

Ans. Yesterday.

Cross-int. 119. By whom?

Ans. I think by Mr. Racey, Mr. Avery, and Mr. Cutter.

Cross-int. 120. Prior to your attention being called to it yesterday had you thought of the matter with reference to recollecting the year or time that you saw the eels in that cellar?

Ans. No.

Cross-int. 121. Had you thought of it at all?

Ans. No.

Cross-int. 122. How, then, can you say it was not in 1864?

Ans. Because my belief is that it was in 1863.

Cross-int. 123. You might be mistaken in your recollection, might you not?

Ans. Oh, yes, any man is liable to be mistaken in his recollection; I only give you my best recollection.

784 Cross-int. 124. Have you had any talk with Mr. Racey, yesterday or to-day, as to when it was?

Ans. Yes; yesterday.

Cross-int. 125. Before your examination commenced?

Ans. Yes.

Cross-int. 126. Now, what makes you think your first visit to the cellar was in 1860?

Ans. That is my belief. I lived then in Thirty-fourth street, between Fifth and Sixth avenue, and kept house from the fifth day of April, 1859, until the winter of 1860–1861. It is my belief that it was during the summer of 1860; it was warm weather.

Cross-int. 127. In what month did you give up housekeeping?

Ans. My sister-in-law took charge of the house after October 12, 1860. I actually remained in the house until December, 1861; I sold the house in January, 1862.

Cross-int. 128. Have you ever resumed housekeeping since? If yea, when first, and where?

Ans. Either the 5th or the 8th of October, 1863, 52 Bleeker street.

Cross-int. 129. How long have you continued housekeeping since you resumed it in Bleeker street?

Ans. Up to this day.

Cross-int. 130. Have you during that time purchased supplies for your table from Mr. Racey's stand?

Ans. Yes, sir.

Cross-int. 131. To what extent, and how often?

Ans. For my wife, and child, and servants; I could not tell how often?

Cross-int. 132. Please average it as nearly as you can, whether it was as often as once a day, once a week, once a fortnight, or how often it may be.

Ans. No; neither once a day, nor once a fortnight, because my wife went to market and told me she dealt with Mr. Racey. How often she went there I don't know; I only went occasionally.

Cross-int. 133. Were most of the supplies for your table of the
785 kinds of goods kept by Mr. Racey obtained from him during the time you were housekeeping?

Ans. No, not that I know of.

Cross-int. 134. What proportion, then, to the best of your knowledge and belief?

Ans. I could not tell.

Cross-int. 135. But you have traded with him, more or less, since 1859, while housekeeping, have you not?

Ans. I have traded with him often; but how often I could not pretend to say.

Cross-int. 136. Are you trading with him at the present time, or have you an open account with him?

Ans. Neither one nor the other.

Cross-int. 137. How long since have you ceased to trade with him?

Ans. Two and a half to three years; but still my wife occasionally goes there, as she informs me, and buys his goods. But I never have accounts with him; I pay cash.

Cross-int. 138. When you visited the cellar the first time, was any one present in the cellar with you but Mr. Racey?

Ans. His man or boy may have been there, but I have no recollection of it. I believe Mr. Racey and I went down to the cellar alone.

Cross-int. 139. After entering the cellar what did you first observe?

Ans. My attention was merely called to this freezer or ice-box.

Cross-int. 140. Did you look into the inside of it?

Ans. As he opened the doors.

Cross-int. 141. Did you go into it, or place your head inside of it?

Ans. I have no recollection that I either went into it or put my head into it. I am sure I did not go into it.

Cross-int. 142. Did Mr. Racey place a light inside of it, or at the door of it?

Ans. I have no recollection of any light other than the light
786 which came from the door of the cellar. If Mr. Racey had a light, I do not recollect it.

Cross-int. 143. Did you observe anything else in the cellar?

Ans. No, sir.

Cross-int. 144. Can you swear that the eel-tank was not there?

Ans. I swear that if the eel-tank was there, I did not see it; and if it was in the same position in which I saw it in 1863, I think I would have seen it.

Cross-int. 145. Did you go round behind the freezer?

Ans. I don't recollect that I did.

Cross-int. 146. Did you see anything by the side of it?

Ans. Nothing that I now recollect.

Cross-int. 147. Whereabouts in the cellar was the freezer?

Ans. As you entered the cellar it stood a little to the left.

Cross-int. 148. Against or close to the left-hand wall of the cellar, do you mean?

Ans. Close to the left-hand wall; but whether it touched it or was against it I am unable to state.

Cross-int. 149. What was on the right-hand side of the cellar as you enter the cellar door?

Ans. I have no recollection of anything. There might have been a great many things there, but I did not look.

Cross-int. 150. Did you see a box, or boxes, an ice-grinder, brooms, and rubbish?

Ans. There may have been all that there, but the only thing my attention was called to was this freezer, and I did not feel much interest in that.

Cross-int. 151. Describe the interior of the ice-box or freezer that you looked into.

Ans. I could not describe it except that he had some birds lying on the bottom of it. It looked to me like a huge refrigerator.

Cross-int. 152. Cannot you tell anything that you saw inside except the birds?

Ans. I did not examine it at all. It looked like an ice-box, or refrigerator, or whatever you call it.

787 Cross-int. 153. You had seen the inside of refrigerators before, I presume?

Ans. Yes.

Cross-int. 154. What difference did you observe between the inside of that refrigerator and the inside of those you had seen before?

Ans. The refrigerators that I had seen before had no tubes; but in the refrigerator of Mr. Racey's there were tubes, or pipes, or whatever you choose to call them, that were standing up and down.

Cross-int. 155. In what part of the interior did you see the pipe or pipes?

Ans. My present recollection is that they were on the side.

Cross-int. 156. On which side?

Ans. On either side; on both sides.

Cross-int. 157. How many of them?

Ans. I did not count them. I don't know how many.

Cross-int. 158. Do you recollect their shape?

Ans. No, sir; I did not examine them as to their shape.

Cross-int. 159. Are you able to swear that the time of this first visit was not in 1861?

Ans. I swear that it was in 1860, because that is my present belief, and for the reasons that I have already before stated.

Cross-int. 160. Is it anything more than your present belief, and may you not be mistaken as to the time?

Ans. It is nothing more than my present recollection and belief, and from the circumstance I have already stated about my sister-in-law taking charge of the house immediately after the 12th of October, 1860. I am as liable to be mistaken as anybody else as to the time.

Cross-int. 161. Might it not possibly have been later even than 1861?

Ans. I think not, and I believe not.

Cross-int. 162. Were you requested to remember the date at that time or since?

Ans. No.

Cross-int. 163. Did you make any memorandum of it for the purpose of remembering it, or otherwise?

788 Ans. No.

Cross-int. 164. Has your attention been called to the date by any one until yesterday?

Ans. No, sir.

Cross-int. 165. Have you given any thought to it with reference to the date until yesterday?

Ans. No, sir.

Cross-int. 166. After your first visit, did you tell any one about the circumstances of your visit until yesterday? If yea, whom?

Ans. Not that I recollect. I never bothered my mind about it, and never thought it would be the subject of litigation.

Cross-int. 167. In what month of the year was it?

Ans. It was in warm weather, and before the 12th of October; I know that very well.

Cross-int. 168. Did you have any talk yesterday or to-day with Mr. Racey with reference to the time of that first visit?

Ans. Only with Mr. Avery, not with Racey, as to the time.

Cross-int. 169. Have you, at any time, talked with Racey about that first visit?

Ans. Yes, sir.

Cross-int. 170. When?

Ans. Yes, yesterday, before I was placed on the stand, when I spoke with Mr. Avery in the presence of Mr. Racey. Mr. Racey spoke to me about it in Mr. Avery's presence. The conversation was between the three of us.

Cross-int. 171. Did not Mr. Racey say or suggest that it was in 1860 when you and he visited the cellar first?

Ans. No, nor did I require any suggestion as to what I was to swear to.

Cross-int. 172. Who asked you to come here as a witness?

Ans. Mr. Joseph Racey, jr.

Cross-int. 173. When was that?

Ans. Yesterday, a few minutes before I got over here.

Cross-int. 174. When he requested you to be a witness, did he not inquire of you what you remembered about your visits to his cellar?

789 Ans. No; he asked me if I would come over to testify as to his character. I replied yes. [On my way here I was introduced to

Mr. Avery in the street, and then it was that I ascertained what the litigation was about. Then, for the first time here, in the presence of Mr. Avery and Mr. Racey, I stated what I knew about my visits to the cellar.]

(That portion of the answer in brackets, objected to by counsel for respondents, as not being called for by the interrogatory.)

Cross-int. 175. At the time you became counsel for Mr. Racey, in the case you have mentioned, did Mr. Racey have other counsel besides you?

(Objected to for the reasons stated in objection to interrogatory 48.)

Ans. No.

Cross-int. 176. Were you his regular counsel after that?

Ans. He had no law business after that of any consequence to attend to, other than I have stated. He may have had some small matters that did not amount to anything.

Cross-int. 177. Do you know of his employing other counsel after having had that first case?

Ans. If he had, I don't know anything about it.

Cross-int. 178. You did all his law business, so far as you know, after that?

(Objection last stated renewed.)

Ans. I don't know anything of his law business, except what I did for him. He may have had plenty of law business for what I know.

Cross-int. 179. Did you learn or hear of any litigation in regard to the title of the personal property at Mr. Racey's stands, in the market, and used in connection therewith?

(Objection continued.)

Ans. This is new to me. If I have ever learned or heard anything about it it has passed my memory, and I do not remember anything of it.

Cross-int. 180. Have you not learned or heard that there was a suit in court in regard to the title of that property at Racey's stand, and connected therewith, as late as 1863?

790 (Objection continued.)

Ans. No.

Cross-int. 181. Have you not learned or heard that in 1863 the property at those stands was sold at auction?

(Objection continued.)

Ans. I never heard anything about it until now, from the counsel.

Cross-int. 182. You speak of Mr. Michælis. Please give his full name and place of business.

Ans. I don't know his full name. I never had occasion to ask; he is connected with the California cigar store, on Broadway.

Cross-int. 183. You speak of several conversations with Mr. Martinez. Where, and under what circumstances, did those conversations occur?

Ans. I stated yesterday all I knew on this matter.

Cross-int. 184. Is that all the answer you have to make to the question?

Ans. Yes.

Cross-int. 185. Did you state where your conversations with Mr. Martinez took place, and the circumstances under which they occurred?

Ans. The examining counsel asked me where those conversations occurred, and I told him at the Maison Dorée, in Fourteenth street, and that Mr. Martinez spoke of Mr. Racey's general reputation. The conversations took place in the Maison Dorée; I used to drop in there casually to take a smoke.

EDMON BLANKMAN.

791 *Deposition of Joseph H. Storms, taken, subscribed, and sworn to before Kenneth G. White, examiner.*

JOSEPH H. STORMS, being called as a witness on the part of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Joseph H. Storms; my age is forty; I reside at 75 Eldridge street, New York City; I am a surveyor for an insurance office.

Int. 2. Do you know Mr. Joseph H. Racey, jr.?

Ans. Yes, sir.

Int. 3. How long have you known him?

Ans. For the last fifteen years.

Int. 4. Were you ever employed by him in his business in Centre Market, New York?

Ans. Yes, sir.

Int. 5. When first, and for how long?

Ans. In the spring of 1862; I remained with him in the neighborhood of eighteen months or two years, as near as I can recollect.

Int. 6. At any time during that period, or subsequent to that, were you connected with him in business?

Ans. Well, subsequent to that, sir, I used to make out bills for him.

Int. 7. When you first went into his employment, in 1862, did he have any ice-box or freezer, or apparatus of any kind, used for freezing fish and other animal substances?

(Objected to as incompetent at this stage of the evidence in the case, it not appearing to be in rebuttal of the evidence offered by the complainant, in reply to evidence offered by complainants, but cumulative to said evidence of respondents; also objected as leading in form.)

Ans. Yes, sir.

792 Int. 8. In 1862, when you first went into Mr. Racey's employment, did he not use, or occupy any cellar under Centre Market? If yea, can you locate it?

(Same objections continued.)

Ans. Well, he occupied a cellar under Centre Market. It was situated below his stand, towards Grand street.

Int. 9. Were you ever in that cellar in 1862? If yea, what, if anything, did you see there?

(Same objections continued.)

Ans. Yes. I saw a freezer or ice-box there.

Int. 10. State where it was located with reference to the entrance of the cellar.

(Same objections continued.)

Ans. It was located towards the back part of the cellar, a passage-way on each side of it.

Int. 11. Did you ever see the interior of that freezer?

(Same objections continued.)

Ans. Yes, sir.

Int. 12. Describe as well as you can the interior of that freezer, as you saw it in 1862.

(Same objections continued.)

Ans. There were pipes on each side of it, on the inside, that run up and down the box. There were three pipes running up and down at each side and one underneath them.

Int. 13. Do you remember the shape of the upright tubes or pipes?

(Same objections continued.)

Ans. They were larger at the top than at the bottom, as near as I can recollect.

Int. 14. Into what, if anything, did they enter at the top?

(Same objections continued.)

Ans. There was a metal pan on top, and the tubes entered into this pan.

Int. 15. Were these upright pipes connected in any way with the pipe underneath them?

(Same objections continued.)

793 Ans. Yes.

Int. 16. Did you ever know of anything being in those pipes and the pans?

(Same objections continued.)

Ans. Ice.

Int. 17. Did you ever see the apparatus in operation?

(Same objections continued.)

Ans. What do you mean by operation?

Int. 18. Charged up—the pipes and pans filled with ice. Did you ever see it in use?

(Same objections continued.)

Ans. Yes, sir.

Int. 19. When so charged up and in use, did you ever observe the external appearance of the pipes on the inside of the chamber?

(Objections continued.)

Ans. All of them were very cold.

Int. 20. Did you ever know anything to be frozen in that apparatus?

(Objections continued.)

Ans. Yes, sir.

Int. 21. What?

(Objections continued.)

Ans. Fish.

Int. 22. When first did you know of fish being so frozen in it?

(Objections continued.)

Ans. In the spring and summer of 1862.

Int. 23. Please examine the model now shown you, marked Exhibit AA., K. G. W., U. S. Com., produced July 27th, 1869, and state what, if any, difference there was between the internal arrangement of the apparatus you saw, as stated by you, in Mr. Racey's cellar in 1862, and that of the model referred to.

(Same objections continued.)

Ans. (Witness, after looking at the model, says:) I don't notice any difference. As near as I can recollect it is the same.

Int. 24. Did you observe any pipes or tubes passing through
794 from the inside of the freezer to the outside? If yea, in what part of the apparatus were they?

(Objections continued.)

Ans. Yes; they were on the back part of the apparatus.

Int. 25. Do you recollect how many there were?

Ans. I can't say for certainty whether there was one or two on each side.

Int. 26. During the time you were in the employment of Mr. Racey, did you know of his selling any articles artificially frozen in that apparatus? If yea, what?

(Objections continued.)

Ans. Yes; fish, poultry, and game.

Int. 27. What portion of the time that you were in his employ was the apparatus you have described in use?

(Same objections continued.)

Ans. It was in use pretty much all the time.

Int. 28. Did you ever see any one charge or fill up the pans and pipes of that apparatus? If so, what did you see them put into it?

(Objections continued.)

Ans. Yes, sir. They put ice into them.

Int. 29. How, if at all, was the ice prepared before it was put in? Was it in large or small pieces?

(Objections continued.)

Ans. It was ground up, sir.

Int. 30. During the time that you were in Mr. Racey's employ, was Mr. John Racey at any time at work for him?

(Objections continued.)

Ans. No, sir.

Adjourned to July 31, 1869, at 10 o'clock a. m.

795 JULY 31, 1869.

Present, counsel for the respective parties.

Int. 31. Before you went into Mr. Racey's employ, in 1862, were you ever in the cellar referred to under Centre Market occupied by him? If yea, when first?

(Objections continued.)

Ans. Well, I have been in the cellar, but as to the time I can't say.

Int. 32. State about how long before, as near as you can.

(Objections continued.)

Ans. Well, I should judge about two or three months.

Int. 32. Was the freezer you referred to as being in that cellar in 1862 ever seen by you before you went into Mr. Racey's employment?

(Objections continued.)

Ans. Yes, sir.

Int. 33. When first, as nearly as you can state?

(Objections continued.)

Ans. Two or three months before I went into Mr. Racey's employment.

Int. 34. What else besides the freezer was there in that cellar during any part of the time you were in Mr. Racey's employment?

(Objections continued.)

Ans. An eel-tank and a large ice-box.

Int. 35. Where was the eel-tank placed with reference to the freezer you have first described?

(Objections continued.)

Ans. It was in the rear of the freezer, and stood against the rear wall of the cellar.

Int. 36. Did you ever see Mr. Enoch Piper, the complainant, before you met him at this examination? If yea, when first did you see him?

(Objections continued.)

796 Ans. Yes, sir. I saw him at my house one evening. As near as I can recollect, it was the last fall, or early winter.

Int. 37. Did you have any conversation with him in regard to Mr. Racey's freezer and your first knowledge of its existence?

(Objections continued and further objected to because no sufficient foundation has been laid for the introduction of such evidence.)

Ans. Yes, sir; we had a conversation upon the subject of the freezer and my knowledge of its existence.

Cross-examination without waiving any of the preceding objections.

Cross-int. 38. In what capacity were you first employed by Mr. Racey?

Ans. As a clerk.

Cross-int. 39. What were your duties?

Ans. Making out bills.

Cross-int. 40. Anything else?

Ans. Collecting bills that I had made out for him, and returning the money to the stand.

Cross-int. 41. Did you keep his books?

Ans. Yes, sir.

Cross-int. 42. Did you act in that capacity all the time you were connected with him?

Ans. Yes, sir.

Cross-int. 43. From your first employment by him until you ceased to be connected with him did you keep his books?

Ans. Yes, sir.

Cross-int. 44. At what salary or wages?

Ans. Well, I received about fifty dollars a month. There was no stated salary between him and me.

Cross-int. 45. Did you receive about that amount per month on an average while you were with him?

Ans. I should think I did, as near as I can recollect.

Cross-int. 46. How often were you paid?

Ans. Every Saturday night.

Cross-int. 47. How much did you receive every Saturday night?

797 Ans. Sometimes I would get $10 to $15, according as I wanted to use the money.

Cross-int. 48. Was there not a regular sum understood between you and Mr. Racey as your weekly wages?

Ans. No; I don't think there was, sir.

Cross-int. 49. Did you have a settlement with him at any time for your wages?

Ans. No, sir; no settlement, because at the time I left him all money due me was received. There was no regular agreement between us.

Cross-int. 50. You got your pay, regularly, as you went along, did you not?

Ans. Yes, sir.

Cross-int. 51. Did you ever pass receipts with him, or take any receipt from him?

(Objected to as being irrelevant and immaterial, and not open on the cross-examination, and as not relating to matters inquired of in the examination-in-chief.)

Ans. With respect to my salary I never passed a receipt to him. The only way in which I can answer as to taking receipts from him is that in case he paid any bill he handed the receipt to me. That is the only way in which receipts passed between us.

Cross-int. 52. For what purpose did he hand it to you?

(Objection continued.)

Ans. To file away amongst other bills that he had paid.

Cross-int. 53. Have you got any of those receipts now, or did you leave them in his possession?

(Same objection.)

Ans. I left them in his possession?

Cross-int. 54. Were you a copartner with him, while you were there, in business?

(Objection continued.)

Ans. No, sir.

Cross-int. 55. Were you a copartner in business with any one at those stands at any time?

(Objection continued.)

798 Ans. No, sir.

Cross-int. 56. In whose name was the business carried on at those stands while you had anything to do with them?

(Objection continued.)

Ans. Joseph H. Racey.

Cross-int. 57. You mean Mr. Joseph H. Racey, to whom you have previously referred?

Ans. Yes, sir.

Cross-int. 58. Were you ever in partnership with Mr. Racey's father in business at those stands?

(Objection continued.)

Ans. No, sir.

Cross-int. 59. In what year and month did you cease to have anything to do with the business at those stands? Please state as near as you can.

Ans. I think it was in the spring of the year. It might have been the latter part of the winter. I can't state positively what year it was; it might have been in 1864. I can't state the month.

Cross-int. 60. Might it not have been in 1865?

Ans. No, sir; I don't think it was as long back as that.

Cross-int. 61. Do you think it was in the year 1862?

Ans. No, sir.

Cross-int. 63. Was it in 1863?

Ans. Well, it might have been in the winter of 1863, or in the spring of 1864. I did not make any particular memorandum of it, as I did not know that anything particular should occur about it. As near as I can recollect, it might have been in the winter of 1864.

Cross-int. 64. Might it have been in 1866?

Ans. No.

Cross-int. 65. You speak of not making any memorandum n particular Did you make any memorandum in general of the time?

Ans. No, sir.

Cross-int. 66. What business did you go into next after leaving Mr. Racey?

Ans. Railroad business.

799 Cross-int. 67. On your account, or in the employ of some other party?

(All the objections heretofore stated renewed to this question.)

Ans. In the employ of another party.

Cross-int. 68. How soon after leaving Mr. Racey?

(Objection continued.)

Ans. Well, as near as I can recollect it, it might have been a month; it might have been three months.

Cross-int. 69. Who was that party, and where was his place of business?

(Objection continued.)

Ans. Third Avenue Railroad Company, New York City.

Cross-int. 70. In what capacity were you employed by them?

(Same objections continued.)

Ans. Conductor.

Cross-int. 71. How long did you work for them?

(Objections continued.)

Ans. In the neighborhood of two years, as near as I can recollect.

Cross-int. 72. At the time you first commenced working for Mr. Racey, as stated by you, were there any other persons in his employ at his stands in the market?

(Same objection.)

Ans. Yes, sir.

Cross-int. 73. Who were they?

Ans. Mr. Connery or Conroy; we called him "the Major." He had a man, that he used to hire there once or twice through the week, named Cannon; and he had also some boys to carry out parcels.

Cross-int. 74. Were these boys employed constantly, or only occasionally?

Ans. One of them was employed constantly, and one or two occasionally, especially Fridays and Saturdays.

Cross-int. 75. What was the name of the one that was employed constantly?

800 Ans. I can only give you his first name; they called him Charley. I never knew his last name.

Cross-int. 76. If I understand you, then, at the commencement of your employment by Mr. Racey the only regular help, besides your help, was Mr. Connery or Conroy, and the boy "Charley"—is that so?

Ans. These are the only ones that I can recollect, as well as my memory serves me.

Cross-int. 77. What was the Christian name of Mr. Connery or Conroy?

Ans. That is what I can't tell you, sir. Whenever I called him, I called him "Major." I don't recollect ever having heard his given name.

Cross-int. 78. About how old a man was he?

Ans. I should think he was about twenty-five years of age.

Cross-int. 79. When did you last see him?

Ans. Yesterday.

Cross-int. 80. Where?

Ans. In this room.

Cross-int. 81. Was he the man who sat near the window yesterday afternoon for a time?

Ans. Yes, sir.

Cross-int. 82. Do you remember the names of any other help afterwards employed by Mr. Racey while you were there?

Ans. I can't recollect any other names.

Cross-int. 84. Do you know who kept Mr. Racey's books before you commenced keeping them?

(Objections already stated renewed.)

Ans. Yes, sir.

Cross-int. 85. Who was he?

Ans. Mr. William Moremus, or Doremus.

Cross-int. 86. Were you acquainted with him?

Ans. Yes, sir.

Cross-int. 88. Where is he?

Ans. He is dead.

801 Cross-int. 89. Did he die before you became book-keeper for Mr. Racey?

Ans. No, sir; I think not.

Cross-int. 90. When did he die?

Ans. That is more than I can answer. I heard of his death.

Cross-int. 91. Had he ceased keeping the books for Mr. Racey before you commenced keeping them?

Ans. I think he had, sir.

Cross-int. 91. How long before?

Ans. I cannot answer, sir; for I have no recollection of it.

Cross-int. 92. About how long before?

Ans. I could not say whether it was six months or a year. I have no recollection of it at all, it is so long ago.

Cross-int. 93. He was not there when you first came there, if I understand you, was he?

Ans. No, sir.

Cross-int. 94. And Mr. Racey had been without a book-keeper for some time, except himself, had he?

Ans. Well, I can't recollect who kept the books from the time Mr. Doremus left, until I took them up. I don't know whether they were kept during that time by Mr. Racey, or who kept them.

Cross-int. 95. Did you visit Mr. Doremus during his sickness?

(All objections continued.)

Ans. No, sir.

Cross-int. 96. Did you know of his being sick?

(Same objections.)

Ans. No, sir.

Cross-int. 98. Was there a man by the name of Grose employed there, while you were there?

(Objections continued.)

Ans. No, sir.

Cross-int. 99. What business were you employed in immediately before being employed by Mr. Racey?

(Objections continued.)

Ans. I helped to raise a regiment here, sir, at the time the war was going on.

802 Cross-int. 100. Besides what you did in regard to the regiment, what was the last business you were engaged in next preceding your employment by Mr. Racey?

(Objections continued.)

Ans. Three or four months before I was connected with the regiment I was doing nothing; and before that, I was connected with an insurance company.

Cross-int. 101. What insurance company, and where was their place of business?

(Objections continued.)

Ans. The Market Insurance Company, corner of Pearl and Beekman streets.

Cross-int. 102. In what capacity were you employed by them?

(Objections continued.)

Ans. Surveyor; the same position that I hold now, sir.

Cross-int. 103. Were you employed at a salary?

(Objections continued.)

Ans. Yes, sir.

Cross-int. 104. When did you settle your accounts with the insurance company? Give the year and month, as near as you can.

(Objections continued.)

Ans. I think it was in 1859; I have no recollection what month it was.

Cross-int. 105. How long were you connected with the regiment in the way you have stated?

(Objections continued.)

Ans. About two months, as near as I can recollect.

Cross-int. 106. What regiment was it?
(Objections continued.)
Ans. Mechanics' Rifles.
Cross-int. 107. Do you mean to say that you were not employed by the insurance company at all after 1859?
(Objections continued.)
Ans. No, I don't think I was with that company.
803 Cross-int. 108. Were you employed by any other insurance company from the time you ceased to be employed by that company until you were employed by Mr. Racey?
(Objections continued.)
Ans. No, sir.
Cross-int. 109. Was there any other Mr. Storms employed by Mr. Racey, besides yourself, to your knowledge?
(Objections continued.)
Ans. Not that I am aware of.
Cross-int. 110. In what month did you commence work for Mr. Racey?
(Objections continued.)
Ans. I can't say, sir; I am not positive what month it was.
Cross-int. 111. Might not your employment with Mr. Racey have commenced in 1863?
(Objected to, as before.)
Ans. No, sir, I think not.
Cross-int. 112. Have you not stated to some party that you were first employed by Mr. Racey in 1863?
(Same objections.)
Ans. I think not, sir.
Cross-int. 113. Do you know a man named Michael Downey?
(Objected to, as before.)
Ans. No, sir.
Cross-int. 114. Do you know a man named Downey that worked for Mr. Racey at any time?
(Objected to, as before.)
Ans. I recollect a boy named Downey who used to work for him.
Cross-int. 115. Do you know what his Christian name was?
(Objections continued.)
Ans. John.
Cross-int. 116. About how old a boy was he?
(Objections continued.)
Ans. Eighteen or twenty years of age, as near as I can judge of his age.
804 Cross-int. 117. Did you know a person named Ward, working for Racey, at any time?
(Objections continued.)
Ans. I don't recollect the name.
Cross-int. 118. Did you know a person named Sweat, working for Mr. Racey?
(Objections continued.)
Ans. I knew a person named Sweat, but not working for Mr. Racey.
Cross-int. 119. Did you know a person by the name of Scully, working for Mr. Racey, at any time?
(Objections continued.)
Ans. No, sir.
Cross-int. 120. How long were you employed by Mr. Racey, from first to last? Please state as near as you can.
Ans. As near as I can recollect, from eighteen months to two years.

Cross-int. 121. Now, was it not, in fact, about five or six months, instead of eighteen months or two years?

Ans. No, sir.

Cross-int. 122. Have you ever been to Mr. Racey's stands since you left his employment?

(Objections continued.)

Ans. No, sir.

Cross-int. 123. Have you ever been in that cellar since you left his employment?

(Objections continued.)

Ans. No, sir.

Cross-int. 124. Was it part of your duties while employed by him to do work in that cellar?

(Objections continued.)

Ans. No further than to take something down there, and fetch something out.

Cross-int. 125. How many times did you do that?

Ans. I have done it a great number of times.

805 Cross-int. 126. What did you take down to the cellar, and what did you take out?

Ans. I have taken fish down there, poultry, and game. I have taken the same things out.

Cross-int. 127. Was it not the duty of the other help who attended the stands, to do that work, while you attended to the books and accounts?

Ans. Yes, sir; in fact, we all did it at certain times.

Cross-int. 128. Have you not stated, in substance, to some person, that you were not sure whether the freezer in the cellar was built and in operation when you first went there, or built while you were there?

(Objections continued.)

Ans. No, sir. It was built before I went there.

Cross-int. 129. How many boxes were there in the cellar when you first went there?

(Objections continued.)

Ans. The freezer was there, and a large common ice-box, on one side of the cellar.

Cross-int. 130. On which side of the cellar were they?

(Objections continued,)

Ans. The common ice-box was on the right-hand side as you enter the cellar, towards Grand street. The freezer stood in front of the entrance of the cellar, towards the back part of the cellar.

Cross-int. 131. Did it not stand a little to the left of the centre of the cellar, as you enter the cellar door?

Ans. It might, sir; I am not positive. It might have stood a little to the left.

Cross-int. 132. What else was there in the cellar, besides the ice-box and the freezer, at the time you commenced to work for Mr. Racey?

(Objections continued.)

Ans. Nothing that I recollect of specially, except some old boxes and hogsheads, as near as I can recollect.

Cross-int. 133. When you left Mr. Racey's employ, what was there in the cellar?

806 Ans. The freezer was in the cellar, the ice-box, and the eel-tank.

Cross-int. 134. Whereabouts in the cellar was the eel-tank?

Ans. In the back part.

Cross-int. 135. Standing in the cellar at the door, could you see the eel-tank?

Ans. You could see one end of it.

Cross-int. 136. How much of the eel-tank could you see?

Ans. Well, as near as I can recollect you could see two feet of it, I should judge.

Cross-int. 137. Was there anything placed around or near to any part of the eel-tank to stand upon while using it?

Ans. I can't say positively whether there was a platform built there, or whether they stood on an old box, in case they wanted to take anything out of the eel-tank.

Cross-int. 138. When using it they would need a platform or something of the sort, would they not?

Ans. Yes, sir.

Cross-int. 139. On which side of the eel-tank was that placed?

Ans. On the front part.

Cross-int. 140. Was there anything between the eel-tank and freezer?

Ans. I think not, sir.

Cross-int. 141. About how far apart were they?

Ans. I can't say positively. It might have been two feet; it might have been more.

Cross-int. 142. Did the freezer, as you call it, stand against or close to the left-hand wall of the cellar as you enter?

Ans. It stood off from the wall of the cellar.

Cross-int. 143. What distance from the left-hand wall of the cellar?

Ans. Well, I could not exactly say the distance. There was quite a passage-way between the wall and the freezer, as well as I can recollect.

Cross-int. 144. How many doors had the ice-box standing on the right-hand side of the cellar you spoke of?

(Objections continued.)

807 Ans. It raised up by either one or two lids. The box was a long box, and it might have had a lid cut into two parts, so that one lid might be raised up while the other was closed down; but my impression is that the lid was all in one piece.

Cross-int. 145. Did it not have a door that swung down in front by hinges at the bottom?

(Objections continued.)

Ans. I think not, sir.

Cross-int. 146. Did not Mr. Racey, while you were with him, have a box with a door on the side opening in the way last described?

(Objections continued.)

Ans. I think not, sir.

Cross-int. 147. Were any changes made in his ice-boxes while you were there?

(Objections continued.)

Ans. Not to my recollection.

Cross-int. 148. Did he not have one or more new ones built?

(Objections continued.)

Ans. Not to my recollection.

Cross-int. 149. Was there a sale of the property at those stands while you were there?

(Objections continued.)

Ans. I think not.

Cross-int. 150. Was there a sale of any part of the property at those stands while you were there?

(Objections continued.)

Ans. None that I know of, sir.

Cross-int. 151. Did you know who owned the personal property at those stands while you were there?

(Objections continued.)

Ans. No; I did not know any one except Mr. Joseph H. Racey, jr.

Cross-int. 152. If the property at those stands had been sold at auction while you were there, would you not have known it?

(Objections continued.)

Ans. I think I would.

808 Cross-int. 153. But you never heard anything about it while you were there?

(Objections continued.)

Ans. No, sir.

Cross-int. 154. By what name was this freezer, as you now call it, usually known or called by you, Mr. Racey, and the other help, while you were at work there?

(Objections continued.)

Ans. Nothing more than that we would call it the freezer.

Cross-int. 155. Had you any knowledge of any other freezer at that time?

(Objections continued.)

Ans. No, sir.

Cross-int. 156. Did you know of Mr. Racey's having any other at any time?

(Objections continued.)

Ans. No, sir.

Cross-int. 157. Did you see his model of the freezer?

(Question objected to, as it assumes the existence of a thing to which the attention of the witness has never been called, and is a disingenuous way of calling the witness' attention to an assumed fact.)

Ans. The only model I have seen, sir, is that one there on the table.

Cross-int. 158. How long before you left Mr. Racey's employ was the eel-tank built?

(Objections continued.)

Ans. Well, I can't say positively, sir; it might have been a year.

Cross-int. 159. Did you know who did the work in building it?

(Objected to, as before.)

Ans. Mr. Danforth did the carpenter work. I do not know who did the plumbing work.

Cross-int. 160. Did Mr. Racey, while you were at work for him, expose the frozen articles he had for sale on his stands in a frozen state?

Ans. To a small extent.

809 Cross-int. 161. Were they sold in a frozen state also?

Ans. Yes, sir.

Cross-int. 162. Did you know of his having his account-books rebound at one time while you were with him?

(Objections continued.)

Ans. I have no recollection of it, sir.

Cross-int. 163. Did you not know of his having the covers refilled with new paper?

(Objections continued.)

Ans. I am not aware of it, sir; not to my recollection.

Cross-int. 164. What kind of account-books did he keep? Give their names.

(Objections continued.)

Ans. He kept a book in which he entered accounts of stuff trusted

out during the day or week; besides this book, I think he had a ledger and a journal.

Cross-int. 165. Were they different in any respect from the common account-books used by traders who have occasion to keep a journal and a ledger?

(Objections continued.)

Ans. I think not.

(Adjourned to 10 a. m. the 2d of August.)

MONDAY, *August* 2, 1869.

Present, counsel as before.

Witness JOSEPH H. STORMS' cross-examination continued:

Cross-int. 166. You speak of assisting in getting up a regiment for the war. Who was the colonel of that regiment, and where was his headquarters in this vicinity before it went to the war?

(Objection continued.)

Ans. Colonel Bull; Central Hall, corner of Grand street and Centre Market Place, was its headquarters.

810 Cross-int. 167. In what capacity were you connected with the regiment?

(Objection continued.)

Ans. They roomed there, and I was there as a clerk in taking down names, and one thing and another.

Cross-int. 168. What became of the regiment?

(Objection continued.)

Ans. They were broken up after a while and put in another regiment.

Cross-int. 169. What regiment were they merged in?

(Objection continued.)

Ans. I can't say.

Cross-int. 170. Do you mean to say that you had no business from the time you left the employ of the insurance company in 1859 until you were employed by Mr. Racey, except in assisting to raise the regiment you have spoken of?

(Objection continued.)

Ans. No, sir; I had other business.

Cross-int. 171. What other business had you?

(Objection continued.)

Ans. Insurance broker.

Cross-int. 172. Were you employed by any one, or were you in business for yourself?

Ans. In business for myself.

Cross-int. 173. Did you have an office, or place of business, and, if yea, where was it?

(Objection continued.)

Ans. I had no office. I *done* my business at my own house in 29 Norfolk street.

Cross-int. 174. How long were you thus engaged?

(Objection continued.)

Ans. In the neighborhood of eighteen months.

Cross-int. 175. What business did you engage in after you ceased to be conductor on the said road, as you have mentioned?

(Objection continued.)

Ans. The business I am engaged in at present.

811 Cross-int. 176. When did you cease to be employed as conductor? State as near as you can.

(Objection continued.)

Ans. In the neighborhood of three years, as near as I can recollect; I can't state the year and month.

Cross-int. 177. While you were employed by Mr. Racey, were there any alterations or improvements made in the freezer mentioned, or any change made in its position in the cellar?

Ans. No, sir; I think not.

Cross-int. 178. Was this freezer considered an extraordinary apparatus at the time you were there?

(Objected to.)

Ans. Yes, sir.

Cross-int. 179. Was it shown to people frequently by Mr. Racey or any one?

(Objection continued.)

Ans. Sometimes to some of his particular customers.

Cross-int. 180. Was there anything secret about it?

(Objection continued.)

Ans. No, nothing further I suppose than the freezing part of it.

Cross-int. 181. Was the freezing part kept a secret?

(Objection continued.)

Ans. I can't answer that.

Cross-int. 182. Did you ever show it to any one?

(Objection continued.)

Ans. No, sir; not to my recollection.

Cross-int. 183. Did you have orders not to show it to any one?

(Objection continued.)

Ans. Not that I recollect.

Cross-int. 184. Why didn't you show it, then, to your friends and others?

(Objection continued.)

Ans. I had no particular friends to show it to.

Cross-int. 185. Did Mr. Racey have a patent on it?

(Objection continued.)

Ans. I can't say.

812 Cross-int. 186. Did you understand or hear whether he had or not?

(Objection continued.)

Ans. Not to my recollection.

Cross-int. 187. Did you understand or hear from what source he got his idea of it?

(Objection continued.)

Ans. No, sir.

Cross-int. 188. Who asked you to come here as a witness?

(Objection continued.)

Ans. Mr. Racey.

Cross-int. 189. When?

(Objection continued.)

Ans. Some two or three weeks ago.

Cross-int. 190. Did you then have a talk with him as to what you knew about the freezer?

(Objected to.)

Ans. No, no particular conversation.

Cross-int. 191. Did you talk with him about the time that you were there to work for him?

(Objection continued.)

Ans. Not that I recollect particularly; I told him I came there in 1862.

Cross-int. 192. Prior to your conversation, three weeks ago, how often had you seen Mr. Racey?
(Objection continued.)
Ans. About six months ago I accidentally met him in Broadway.
Cross-int. 193. Did you have any talk then about the freezer?
(Objection continued.)
Ans. No, sir.
Cross-int. 194. When had you seen him before that?
(Objection continued.)
Ans. Some time; I can't recollect the time.
Cross-int. 195. Had you seen him within a year previous?
(Objected to.)
813 Ans. I might have. Can't say certain.
Cross-int. 196. Had you seen him within two years previous?
(Objected to)
Ans. Yes, sir.
Cross-int. 197. About how many times?
(Objected to.)
Ans. I might have seen him twice or half a dozen times; I can't recollect.
Cross-int. 198. I suppose you saw him occasionally from time to time after you ceased working for him until the present time, did you not?
(Objection continued.)
Ans. Yes, sir, I would meet him in the street occasionally.
Cross-int. 199. Did you generally speak to him, or he to you, when you met him?
(Objection continued.)
Ans. No, sir.
Cross-int. 200. Did you recognize him in any way or he you?
(Objected to.)
Ans. No, sir; he might not see me; I would pass right by in the way of business.
Cross-int. 201. At those times when you occasionally met him do you mean to say that you never spoke to him, recognized him, or bowed to him, or he to you?
(Objection continued.)
Ans. I never bowed. I saw him many times that he didn't see me.
Cross-int. 202. You and he were friendly, were you not?
(Objected to.)
Ans. Well, as far as bowing to each other, I suppose.
Cross-int. 203. Do you mean to say that from the time you left Mr. Racey's employ until you talked with him about three weeks ago you never had any talk with him about the freezer or about your working for him?
(Objected to.)
Ans. Yes, sir.
814 Cross-int. 204. Since you left his employ, when was your attention first called to the time or date when you worked for him?
(Objected to.)
Ans. About a week or ten days ago, I should think.
Cross-int. 205. By whom?
(Objected to.)
Ans. W. H. Racey, a brother of Joseph.
Cross-int. 206. Has your attention been called to the same matter by any one else?
(Objected to.)

Ans. Not to my recollection.

Cross-int. 207. Didn't you tell Mr. Enoch Piper that you first went to work for Mr. Racey in 1863, as near as you could state it?

(Objected to.)

Ans. No, sir.

Cross-int. 208. Didn't you tell Mr. Enoch Piper in substance that Mr. Racey got the idea of his freezer from another person and built it in imitation of another man's apparatus, did not invent it himself, and therefore did not seek to obtain a patent for it? Did not you say this substantially to Mr. Piper, or any part of it?

(Objected to on all the grounds heretofore stated.)

Ans. No, sir.

Cross-int. 209. Didn't you laugh at the idea of Mr. Racey's being the inventor of the freezer to Mr. Piper?

(Last objection continued.)

Ans. Not that I am aware of.

Cross-int. 210. Was the subject talked about, as to who was the inventor of the freezer, by you and Mr. Piper?

(Objection continued.)

Ans. Yes, sir.

Cross-int. 211. How long have you lived where you now reside?

Ans. Three years.

Cross-int. 212. Where did you live when you worked for Mr. Racey?

Ans. In Ludlow, corner of Delancey.

Cross-int. 213. How long did you live there?

815 Ans. In the neighborhood of two years.

Cross-int. 214. Where did you move to from there?

Ans. In Forsyth street; don't remember the number.

Cross-int. 215. Where did you remove to from there?

Ans. Where I am living now, in Eldridge street.

Cross-int. 216. Were you living corner of Ludlow and Delancey when you commenced work for Racey?

Ans. No, sir.

Cross-int, 217. Where were you living?

Ans. In Rivington street.

Cross-int. 218. How long was it after you commenced work for Racey that you moved from Rivington street?

Ans. I can't recollect now how long it was.

Cross-int. 219. About how long was it?

Ans. It might have been six months; can't say certain.

Cross-int. 220. How long did you live in Rivington street?

Ans. I don't think I lived there a year.

Cross-int. 221. What year did you move there?

Ans. I don't recollect now. It might have been in 1862, when I went there. I can't say for certain.

Cross-int. 222. What year did you move to Forsyth street?

Ans. I can't say positively what year it was.

Cross-int. 223. How long did you live in Forsyth street?

Ans. In the neighborhood of a year, and it might have been more than that.

Direct resumed:

Int. 224. After your attention was called to the time when you first went to work for Mr. Racey, as you have stated, did you, in any way, refresh your recollection in regard to the time?

(Previous objections made by complainants' counsel renewed, and

other questions further objected to as leading, and open to respondent on re-examination.)

Ans. Yes, sir.

816 Int. 225. What, if anything, enables you to fix the time when you first went to work for Mr. Racey?

(Previous objection continued.)

Ans. Before I went to work for Mr. Racey permanent, I made out some bills for him in 1861.

Int. 226. How are you enabled to fix that date? If by reference to anything, state what it was.

(Objection continued.)

Ans. Well, those bills I made out for Mr. Racey I made out at his house. He then lived in Broome street.

Cross resumed:

Cross-int. 227. You did not work, then, at his stands in the market, in 1861, did you?

Ans. I think not. At the time I made out those bills for him in Broome street, I did not work at his stand.

Cross-int. 228. In what part of the year 1861 did you make out the bills?

Ans. I believe it was in the spring or summer.

JOSEPH H. STORMS.

Deposition of Caleb W. Davis, taken, subscribed, and sworn to before R. E. Stillwell, examiner.

AUGUST 2, 1869.

CALEB W. DAVIS, called and sworn as a witness on the part of the defendants, deposes and says:

Int. 1. What is your name, age, residence, and occupation?

Ans. Caleb W. Davis; forty years of age; reside in Brooklyn; and am a salesman.

817 Int. 2. Do you know Truman Merrifield, stove-dealer and tin-smith, formerly doing business in Water street, New York?

Ans. Yes, sir.

Int. 3. Have you in your charge and custody any of the books of accounts of said Merrifield? If yea, will you produce the cash-book and day-book for the year 1862?

Ans. I have, and now produce them.

(Defendant now offers an entry on the debit side of cash-book, at page 312, which is as follows:)

1862.

April 26. Received of A. & E. Robbins..... $60.26

(Also, the entry from the day-book, page 253, as follows:)

1862.

April 24. A. & E. Robbins, bill rend..... $60.26
Delivered.
Paid.

(Also, the entry from day-book, page 279, as follows:)

1862.

May 19. Rogers & Co.
134¾ lbs. gal. pipe, 2s..... $33.69
Delivered. ¼

(Also, the entry from debit side cash-book, page 324, as follows:)

1862.
May 31. Rec'd. Rogers & Co.'s bill $74.00

(Complainants' counsel objects to the evidence generally, and especially as incompetent at this stage of the evidence in this case, also
818 as immaterial, and no foundation has been laid for the introduction of the testimony.

Also, the entry from day-book, page 272, as follows:)

1862.
May 13. Rogers & Co.
32 lbs. gal. pipe.
Delivered. 26¾ " " " May 15th.
61¾ " " " " 17th.

120

(Also, from same book, page 302, as follows:)

Rogers & Co.

To	67 lbs. zinc, 1s	$8.38
	1 paper carpet-nails	50
Delivered.	8 lbs. solder, 2s	2.00
	25 lbs. lead pipe, 10 cts	2.50
	Plumber's labor	1.25
	Labor, 3½ days, 20s	8.75
		$23.38

(Also, from same book, page 312, as follows:)

Rogers & Co.

To	42 lbs. zinc, 1s	$5.25
	5 lbs. solder, 2s	1.25
Delivered.	1 paper copper nails	50
	10 lbs. lead pipe, 10 cts	1.00
	Labor, 3.50	3.50
		$11.50

(Same objection continued.)

CALEB W. DAVIS.

819 *Deposition of William H. Middleton, taken, subscribed, and sworn to before R. E. Stilwell, examiner.*

AUGUST 2, 1869.

WILLIAM H. MIDDLETON called as a witness on the part of the respondents.

Int. 1. Have you the cash-book of the late firm of William M. Rogers & Co. for the year 1858?

Ans. I have.

(Objected to as generally incompetent, and especially at this stage of the evidence in the case.)

Int. 2. Will you please produce it?
(Objection continued.)
Ans. Yes.
(Witness produces the book.)
Int. 3. Have you the ledger of W. M. Rogers & Co.; and, if yea, will you produce that?
(Same objection continued.)
Ans. Yes.
(Ledger produced by witness.)
Int. 4. Have you the ledger of the year 1856?
(Same objection continued.)
Ans. Yes.
Int. 5. Please turn to that ledger and see if there is any account therein against Joseph H. Racey.
(Same objections.)
Ans. Yes.
Int. 6. Please examine the bill now shown you, marked Exhibit BB, R. E. S., and state whether the items in that bill correspond with those of the account in said ledger last referred to.

820 EXHIBIT BB, R. E. S.

NEW YORK, *Feb. 9th*, 1856.

Mr. J. H. Racey, bought of W. M. Rogers & Co., No. 27 Fulton Fish Market:

Jan'y 23,	balance	$1 70
"	26, 28 lbs. mackerel	4 20
"	29, 50 lbs. do	7 50
"	30, 30 lbs. do	4 50
"	31, 30 lbs. do	4 50
Feb.	6, 50 lbs. do	7 50
	30 lbs. smelt	5 62
	twine	38
		$35 90
Oct. 5, 1858,	Bill rendered.	
	Rec'd payment,	19 09
		$54 99

Bal. $16 30 | 71 29 | 54 99

W'M M. ROGERS & CO.

(On back of exhibit.)

March 13, '57, Mr. Rogs, Fulton Market.

	47 bass, 16c	$7 32
1858.		
Sept. 20,	15½ p. mack., 25c	3 87

(Same objections continued, also objected to as immaterial, no foundation having been laid for the question.)
Ans. It does.
Int. 7. By whom is said bill receipted?
(Same objection continued.)
Ans. George W. Middleton.

Int. 8. At the date of the items contained in said bill, who kept the books of William M. Rogers & Co.?

(Same objections continued.)

Ans. I kept them.

821 Int. 9. Please examine the figuring on the lower left-hand corner of said bill, as follows:

$71 29
54 99

Bal. $16 30

and state by whom they were made.

(Same objections continued.)

Ans. George W. Middleton.

Int. 10. Who kept the books of William M. Rogers & Co. in October, 1858, when that bill was settled?

(Same objections continued.)

Ans. George W. Middleton.

Int. 11. Can you in any way explain the way in which that bill was settled?

(Same objections continued.)

Ans. Well, it appears that we bought something of Mr. Racey, amounting to $71.29; taking out the old bill, I suppose we paid him the balance, $16.30.

Int. 12. Please refer to the entries on the back of that bill, and state, if you can, whether or not the firm of William M. Rogers & Co., before the day of the settlement of that bill, namely, October 5th, 1858, purchased any striped bass or Spanish mackerel of Joseph H. Racey, jr.

(Same objections continued.)

Ans. We have no record of any; not to my knowledge.

Int. 13. What did they purchase of him to make up the sum credited on said bill, namely, $71.29?

(Objections continued.)

Ans. I can't say positively, but I think it was birds.

Int. 14. Do your books show?

(Objections continued.)

Ans. They do not.

Int. 15. Do you know?

(Objections continued.)

Ans. I do not.

822 Int. 16. Do you know whether or not Mr. Racey was dealing in birds prior to October, 1858?

(Same objections continued.)

Ans. I do not.

Int. 17. Are you enabled to say that the firm of William M. Rogers & Co. did not purchase of Mr. Racey, on the 13th of March, 1857, forty-seven lbs. of bass as entered on the back of said bill?

(Same objections, and further objected to as leading.)

Ans. No.

Int. 18. Are you enabled to say that the firm of William M. Rogers & Co. did not purchase of Mr. Racey, on the 20th of September, 1858, fifteen and a half lbs. of Spanish mackerel, as entered on said bill?

(Same objection as to interrogatory 17 continued.)

Ans. No.

Int. 19. Is there any entry upon any book of William M. Rogers & Co. showing how said credit of $71.29, or any part of it, accrued?

(Same objection continued.)

Ans. Not that I am aware of.

Cross-examination, without waiving any of the preceding objections:

Cross-int. 20. Will you please examine the items of the bill referred to in interrogatory six, and state if all the items of the bill appear in your ledger, and, if not, what items do not appear?

Ans. They all appear up to February 6, 1856, inclusive. There is no charge for two and a half years. None of the items of the bill after February 6, 1856, appear on the ledger.

Cross-int. 21. Do the figures in the corner of the bill previously referred to appear upon your ledger?

Ans. They do not.

Cross-int. 22. Do the memoranda and figures upon the back of the bill appear upon the ledger?

Ans. They do not.

Cross-int. 23. In whose handwriting is the memoranda on the back of the bill?

823 Ans. I do not know.

Cross-int. 24. In whose handwriting is the body of the bill?

Ans. My own.

Cross-int. 25. Do you know why the bill remained unsettled so long?

(Objected to as not open on the cross-examination of this witness, and also as immaterial.)

Ans. No other reason than Mr. Racey did not pay it.

Cross-int. 26. In October, 1858, did the firm of W. M. Rogers & Co. trade with the firm of Moon & Lamphier, or Moon, Crandell & Lamphier?

(Same objection continued.)

Ans. It did.

Cross-int. 27. Did the firm of W. M. Rogers & Co. buy goods of the other firm mentioned?

(Same objection continued.)

Ans. They did.

Cross-int. 28. Did not the firm of W. M. Rogers & Co. about that time trade with Racey through the firm of Moon, Crandell & Lamphier, more or less?

(Same objection continued, and also because the same line of examination has before been applied to this witness.)

Ans. I can't say.

Cross-int. 29. If they did, might not this bill have been settled in the settlement of some account of Moon, Crandell & Lamphier, with your firm?

(All the objections heretofore made are made to this question, and also as calling for the opinion of the witness as to a possibility or probability, and not to any fact known to him, or so far as is known to any one else.)

Ans. Well, it is possible.

W'M H. MIDDLETON.

Adjourned to August 3, 1869, at 10 o'clock a. m.

824 *Deposition of Robert I. Lomas, taken, subscribed, and sworn to before R. E. Stillwell, examiner.*

AUGUST 3, 1869.

Present, counsel for the respective parties.

ROBERT I. LOMAS, being called as a witness for the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Robert I. Lomas; I am forty-two years old; I reside at 588 Lexington avenue, New York City; at present I am in the dry-goods business, at 303 Grand street; I also have a coffee-room at 243 and 245 Centre street, in a basement, opposite Centre Market, where I have been twenty-seven years up to last June.

Int. 2. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market?

Ans. Yes, sir.

Int. 3. How long have you known him?

Ans. I have known him from boyhood up—say twenty-five years at least.

Int. 4. Do you know his reputation for truth and veracity?

(Objected to as incompetent.)

Ans. Yes, sir.

Int. 5. What is it?

(Objected to.)

Ans. Good.

Cross-examined, without waiving any objections previously made:

Cross-int. 6. Have you ever heard it talked about?

Ans. Not for many years.

825 Cross-int. 7. When did you hear it talked about?

Ans. Only in boyhood; some indiscretions of boyhood, mischievous, like some other boys around the market; nothing that I would consider criminal.

Cross-int. 8. Have you not heard it talked about within ten years?

Ans. I can't say that I have, except of Mr. Racey's failure in business. [Any one is liable to that. I might fail next month.]

(The part of the answer included in brackets objected to as not responsive.)

Cross-int. 9. Have you heard any one speak of his character for truthfulness at any time?

Ans. I can't call to mind any time.

Cross-int. 10. Have you had any occasion to investigate his character for truthfulness?

Ans. I have not; I have always found his statements to be correct. I have had some business transactions with him, and he has been prompt in meeting his payments with me.

Cross-int. 11. Do you trade with him now?

Ans. He trades occasionally at my place; that is, if you can call trading giving a man to eat and drink for money.

Cross-int. 12. Do you keep a bar-room?

Ans. No, sir; I have sins enough to answer for without selling rum.

Cross-int. 13. Have you not kept liquors for sale?

Ans. No, sir; never.

Cross-int. 15. Do you buy goods of Mr. Racey?

Ans. Occasionally.

Cross int. 16. You are a personal friend of his, I presume?

Ans. I am.

Cross-int. 17. You never had any differences with him, I presume, in business, or otherwise?

Ans. No, sir.

Cross-int. 18. Does he ever buy dry goods of you?

Ans. No, sir.

826 Cross-int. 19. Have you never learned or heard of Mr. Racey's character for truthfulness being impeached, or attempted to be impeached, within ten years, in a suit, or suits, in regard to the property at his stands in Centre Market, or in any suit in court?

(Objected to as immaterial and irrelevant.)

Ans. No, sir.

Cross-int. 20. All you know about his character for truthfulness is, if I understand you, substantially, that he has bought goods of you, more or less, for several years; and you have occasionally purchased of him, and you never had any differences or difficulties with him in your dealings, is it?

(Form of the question objected to, as seeking to give the conclusions of the examining counsel, and committing the witness to the endorsement of them, instead of inquiry about a matter of fact.)

Ans. Yes.

Redirect:

Int. 21. During the past ten years have you or not had continuous intercourse with the various occupants of Centre Market?

(Objected to as not open to counsel for respondents on re-examination.)

Ans. I have.

Int. 22. During that period have you ever heard the reputation of Mr. Racey for truth and veracity questioned?

(Same objection continued.)

Ans. No, sir.

Recross:

Cross-int. 23. You give your attention, I suppose, to your own business, and do not meddle, or attempt to meddle, with other people's affairs, business, or character?

Ans. Yes, that is my reputation, sir.

ROBERT I. LOMAS.

Adjourned to August 4, 1869, at 11 o'clock a. m.

827 *Deposition of John M. Leaman, taken, subscribed, and sworn to before R. E. Stilwell, examiner.*

AUGUST 4, 1869.

Present, counsel for the respective parties.

JOHN M. LEAMAN, being called as a witness for the respondents, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is John M. Leaman; my age is sixty-five; I reside at 10 East Twelfth street; I am a butcher, in Centre Market.

Int. 2. How long have you been there?

Ans. About forty years.

Int. 3. Do you know Joseph H. Racey, jr., fish-dealer, in Centre Market?

Ans. Yes, sir.

Int. 4. How long have you known him?

Ans. I should think thirty years. I have known him from a boy.

Int. 5. Do you know his general reputation for truth and veracity? If yea, what is it?

Ans. I never heard anything said against it; so far as I am concerned, I never had any reason to doubt what he said. I have had many dealings with him, and always found him truthful.

(Answer objected to as not responsive to the question.)

(The examiner states that counsel for respondent amends question by inserting the words "if yea, what is it?")

The witness adds: "I never heard his reputation for truth and veracity discussed."

828 Cross-examination, without waiving any objections previously made.

Cross-int. 6. You are a personal friend of Mr. Racey, I presume?

Ans. Yes.

Cross-int. 7. Have you traded with him, and he with you? If yea, how long?

Ans. Yes; I suppose twenty years; almost as long as he has been in business for himself. I don't know how many years he has been in business.

Cross-int. 8. Are you trading with him at the present time or he with you?

Ans. I have not bought much fish of him lately, because he sells dearer than other men. He has not bought of me for a year or two, I think; perhaps longer.

Cross int. 9. How near are his stands to yours?

Ans. Perhaps a dozen stalls off.

Cross-int. 10. Have you had occasion to investigate his character for truthfulness at any time?

Ans. No, sir.

Cross-int. 11. And you never heard his character for truthfulness talked of by any one?

Ans. No, sir.

Cross-int. 12. All you mean to say, then, is substantially, if I understand you correctly, that you have traded with him somewhat for several years and he with you, and you never had any differences or difficulties in your dealings together?

Ans. None whatever.

Cross-int. 13. You never meddled with his affairs or inquired into his business in any way, I suppose, during the period of your acquaintance.

(Objected to as not open on cross-examination of this witness, and also as immaterial.)

Ans. I have never meddled with his business, but I have talked with him and others about his industry and enterprise, &c.

829 Cross-int. 14. Did you ever learn or hear of his being insolvent at any time?

(Same objection continued.)

Ans. Yes, I have at different times heard a good deal said about his money matters.

Cross-int. 15. Did you ever learn or hear of the personal property at his stands being sold at auction on two different occasions?

(Same objection continued.)

Ans. I heard several times of its being seized; I don't know that I heard of its being sold.

Cross-int. 16. Did you ever learn or hear of any litigation about the property at those stands?

(Same objection continued.)

Ans. No, sir.

J. M. LEAMAN.

Deposition of Edwin Nichols taken, subscribed, and sworn to before R. E. Stillwell, examiner.

AUGUST 4, 1869.

EDWIN NICHOLS, being called as a witness on the part of the respondents, and being duly sworn, deposes and says as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Edwin Nichols. I am fifty-three years of age. I reside at 387 Broome street, New York City. I am not at present in any business. I was formerly in the stove business.

Int. 2. Do you know Joseph H. Racey, jr., fish-dealer in Centre Market?

Ans. Yes, sir.

Int. 3. How long have you known him?

Ans. In the neighborhood of thirty years.

830 Int. 4. Do you know his general reputation for truth and veracity; if yea, what is it?

Ans. Yes, sir; it is good.

Cross-examination:

Cross-int. 5. Have you heard it talked about in any way?

Ans. No, sir.

Cross-int. 6. Have you had any occasion to investigate it in any way, and have you investigated it?

Ans. No, sir; I had no occasion to do so.

Cross-int. 7. You are a personal friend of his, I presume?

Ans. Yes, sir.

Cross-int. 8. Do you trade with him at the present time; if yea, how long?

Ans. Yes. I and my father have traded with him for about twenty-five years.

Cross-int. 9. What you mean to say substantially, if I understand you, is, merely that you have traded with him for several years, and you never had any difficulties or differences with him in your dealings?

Ans. Yes, sir.

Cross-int. 10. Did you ever hear of his being insolvent at any time?

Ans. No, sir.

Cross-int. 11. Did you ever learn or hear of the personal property at his stands being sold at auction on two different occasions?

(Objected to as not open on the cross-examination of this witness, and also as immaterial and irrelevant, and calling for hearsay testimony.)

Ans. No, sir.

Cross-int. 12. Did you ever learn or hear of any litigation about the personal property at those stands?

(Same objection.)

Ans. No, sir.

EDWIN NICHOLS.

831 *Deposition of John H. Racey, taken, subscribed, and sworn to before John A. Shields, examiner.*

AUGUST 5, 1869.

JOHN H. RACEY, recalled for cross-examination, on matters not known to respondents' counsel at the time the previous examination of this witness was closed.

Cross-int. 1. What, if any, money has been paid to you by Mr. Enoch Piper, or his counsel, Mr. Cutter?

(Objected to, because the cross-examination of this witness has been closed at the previous examination of the witness, and further cross-examination is not open to the respondents at this time.)

Ans. Yes, sir, there has been $60.00. I got money from both.

Cross-int. 2. When did you first receive money from Mr. Cutter, and how much was it. If more than once, how much at each time?

(Same objection continued.)

Ans. The first day I was here in court I received from Mr. Cutter here on the table $5.00 court-fees, and signed a receipt for it. On the following day I received $15.00 from Mr. Piper; then I got $10.00 on the following week, in the first of the week, from Mr. Piper; and then $5.00 in the market; Mr. Piper gave me that at Middleton's stand, No. 71, in Fulton market. That same week I got $25.00 from Mr. Piper; I got a promise of more.

Cross-int. 3. Where did you receive the $25.00 last named?

(Same objection continued.)

Ans. I got it outside the court-house here.

Cross-int. 4. Did they promise you any more, if you called for it?

(Same objection continued; also further objected to, as leading in form.)

Ans. Yes, sir.

832 Cross-int. 5. State who it was that promised you, and what was said.

(Same objection continued.)

Ans. Both; to hunt up evidence. They wanted me to find the parties who did the work there. I can't recollect all that was said.

Cross-int. 6. Was anything said by either Mr. Piper or Mr. Cutter about getting you employment? If so, what was said?

(Same objection continued.)

Ans. Yes, Mr. Piper promised me a situation in Boston.

Cross-int. 7. Where, or with whom?

(Same objection as before.)

Ans. I have lost the directions where to go.

Cross-int. 8. Who gave you the directions?

(Same objections as before.)

Ans. Mr. Piper.

Cross-int. 9. On what?

(Same objections as before.)

Ans. On a business card, with his name on the back of it.

Cross-int. 10. Was any amount named to you as compensation or pay for hunting up evidence of the men who did the work, referred to in one of your previous answers?

(Same objections.)

Ans. Yes; there was one—the plumber.

Cross-int. 11. What sum was named? State what was said.

(Same objections as before.)

Ans. He said he would give a big reward; he would give me $300 if I could find him.

Cross-int. 12. Had you ever seen Mr. Enoch Piper before the day you first testified in this case?

(Same objections.)

Ans. No, sir. He has been looking for me since last spring.

Cross-int. 13. Had you ever seen Mr. Cutter before that day?

(Same objections.)

Ans. No sir. He had been looking for me, too, around the office and the stable.

833 Cross-int. 14. Was anything said at any time, either by Mr. Cutter or Mr. Piper, about your going anywhere else than to Boston?

(Same objections.)

Ans. Yes, sir; by Mr. Piper. He offered me a chance to go to sea.

Cross-int. 15. Was this before or after you gave your testimony?

(Same objections as before.)

Ans. Part before, and part while the testimony was going on.

Cross-int. 16. How much of the money was paid you before you signed your previous testimony in this case?

(Same objections as before.)

Ans. Well, I only received $5.00, and Mr. Cutter said it would not do to pay me any more, until the testimony was taken—that that was court-fees, and I signed for that $5.00.

Cross-int. 17. You signed your testimony on a Saturday, did you not?

(Same objections as before.)

Ans. Yes, sir; and received $15.00 afterwards.

Cross-int. 18. You were occupied a Friday and a Saturday in testifying, were you not?

(Same objections as before.)

Ans. Yes, sir.

Cross-int. 19. Did you receive any money on the following Monday or Tuesday?

(Same objections as before.)

Ans. Yes, sir; I don't exactly know which day it was; it was in the early part of the week.

Cross-int. 20. You say you returned from Paraguay May 30th, 1860. How long were you gone?

(Same objections.)

Ans. I left New York on board ship on the 15th of December, 1859.

Cross-int. 21. Were you aboard ship before you left New York City. If so, how long?

(Same objections.)

834 Ans. I was aboard the North Carolina receiving-ship from the 10th day of October, 1859, and was transferred on the 10th day of December to the United States steamer Memphis to go to Paraguay.

Cross-int. 22. Did you know a man by the name of Mike Smith, who worked for your brother Joseph H.?

(Same objections.)

Ans. Yes, sir.

Cross-int. 23. Did you not learn from him, on your return from Paraguay, that your brother Joseph had built a large ice-box in the cellar under Centre Market, and that Danford had done the carpenter's work for him?

(Same objections, and further objected to as hearsay and immaterial.)

Ans. Yes, sir; I saw it there two or three days after. I did not go any further than the foot of the steps.

Cross-int. 24. Where was it situated with reference to the ice that you said stood on the left-hand side as you entered?

(Same objections.)

Ans. Pretty well up on the left, fronting towards Centre Market Place.

Cross-int. 25. About how high was it? How near to the floor of the market above?

(Same objection.)

Ans. The beams of the floor had been cut away; if the beams had remained as they were, there would have been a difference, I should judge, of two feet between the top of the box and the beams of the market floor.

Cross-int. 26. Did you observe any door in that box?

(Same objections as before.)

Ans. There was one pretty thick door, that opened outward, and was at angles on the inside, making it smaller inside than on the face of the box.

Cross-int. 27. Did you see the doors open as you stood on the steps of the cellar?

(Same objections.)

Ans. Yes; Michael Smith was taking stuff out of it to bring up to the market.

835 Cross-int. 28. What was he taking out?

(Same objections.)

Ans. The first basket he put some small birds into it, and the rest was fish. The birds were wrapped up in brown paper.

Cross-int. 29. Do you know whether or not the birds or fish were frozen?

(Same objections.)

Ans. The birds were, because he gave me one to feel; it was quite solid. The fish I know were frozen.

Cross-int. 30. At the time that you were in Middleton's stand in Fulton Market, who did you see there?

(Same objections.)

Ans. Mr. Piper and a gentleman with side-whiskers behind the stand, in the office.

Cross-int. 31. Were you introduced to him by any one, or he to you?

(Same objections.)

Ans. No, sir.

Cross-int. 32. What business was done at the stand; was it a fish-stand?

(Same objections.)

Ans. Yes, sir; fresh, salt, and smoked fish I saw there.

Cross-int. 33. Was anything said about this case and your testimony in it, at that time?

(Same objections as before.)

Ans. Yes, sir. The day I got the last money.

Cross-int. 34. What, if anything, was said to you about it by Mr. Piper, or in his hearing? State as nearly as you can the language used.

(Same objections as before, and as incompetent generally.)

Ans. There were two different days upon which I was at Fulton Market. The first time Mr. Piper spoke to me, and said they were all "bucking" against him in the wholesale market. He mentioned Mr.

Moon, Mr. Lamphier, Mr. Healy, and Mr. Rogers. On the second day this gentleman with the side-whiskers carried on the same conversation.

836 I went there to find Piper. I went from there to the court-house here, and saw Mr. Cutter and Mr. Piper sitting in the court-room. I sent word in to them with a piece of paper which Piper gave me with his directions on, the United States Hotel. Mr. Piper came out to me on the sidewalk, then he went up and saw Judge Phillips. He came back and gave me $25.00. I have not seen Mr. Piper since until I saw him to-day in the court-room. I did not go look for either Mr. Cutter or Mr. Piper from that time to this. My arrangement was to go see them when I wanted money; but I did not go.

Cross-int. 35. From the time you went down on to the steps of the cellar under Centre Market, in 1860, as you have stated, were you during the same year, so far as you are now able to recollect, again in that cellar?

(Same objections as before.)

Ans. I might have gone there on an errand; but I don't recollect it.

Cross-int. 36. For whom did you work after your return from Paraguay in 1860?

(Same objections.)

Ans. Mr. John Greenwood, Barnum's Museum.

Cross-int. 37. About how long were you there?

(Same objections as before.)

Ans. Until within a month of the war breaking out, the 21st of April.

Cross-int. 38. Did you at any time work for Studley's Express?

(Same objection.)

Ans. Yes, sir; every summer season, for the past ten or twelve years.

Cross-int. 39. Did you work at the Bowery Theatre?

(Same objections.)

Ans. I worked at the New Bowery Theater as officer at night. I worked there in that capacity in the summer and fall season; the seasons of '62 and '63.

Cross-int. 40. Did you work for the Hudson River Railroad at any time? If so, when?

(Same objections.)

837 Ans. Yes, sir; I drove a hack-coach three years, in '65, '66, and '67.

Cross-int. 41. For whom, besides those named, have you worked up to 1867, since your return from Paraguay?

(Same objections as before.)

Ans. Several other parties: Robert Lomas, John Hall, Atlantic Docks, Brooklyn; Thomas Marron, Michael McWeeney, Robertson & Co., coopers, Williamsburg; Grand Street and Newtown line of railroad, Frederick Cochen, president; J. L. Fox, Olympic Theatre; T. J. Reader, Waverly Theatre; John Canavan, butcher, 1439 Broadway; Dodd's and Studley's Express.

Counsel for complainant cross-examines the witness, not waiving any of his previous objections to the questions put him this day by counsel for respondents:

Cross-int. 43. At the time you first saw Mr. Piper or his counsel, please state at what hour of the day it was, and where it was.

Ans. I saw Mr. Cutter at the door of Judge Phillips' office, and was introduced by him to Mr. Piper. It was about ten o'clock in the morning.

Cross-int. 44. How soon after that was your first examination commenced?

Ans. After one o'clock.

Cross-int. 45. At what hour were you asked to be present before the examiner to give your evidence?

Ans. There was no stated time.

Cross-int. 46. Was there anything said about the hour of eleven o'clock?

Ans. Mr. Cutter said perhaps there would be some one here, and he would give me until eleven o'clock to return again.

Cross-int. 47. Did you have any conversation at the time you first saw the counsel for Mr. Piper near the door of Mr. Phillips' office, as to what facts you knew in regard to Mr. Piper's case, and about the matters you subsequently testified about on that day and the day following?

838 Ans. Yes, sir. [I was requested to come there by a note from Mr. Cutter, which he left at my house, in Twenty-eighth street, stating that I should go to Mr. Phillips' office, without fail, by nine or half past nine o'clock, on important business. I went there for the purpose of seeing Judge Phillips. I then was told by the clerk that the judge would be back by half past ten o'clock. I returned down-stairs again to wait on the stoop for him to come in. Mr. Cutter made himself acquainted with me; we both returned up-stairs to Mr. Phillips' private office; we had some talk about this case. I was asked if I could recollect days and dates as to when I worked there, in the market, and what I saw there. We then came here to the court, and found Mr. Avery was not ready; and then went down and had some refreshments. I returned back to the court here with Mr. Cutter; left him on the stoop here, and went away to return again. I received further instructions from him how to act—to remember days and dates. On my way up the stairs he said that I should be well paid for whatever evidence I gave, and that the money would come from Mr. Piper. They did not dare give me anything then, for fear I should be asked in the examination if I had got any money. I spoke to him that I might lose my situation through this case, and they proposed to get me another one. I was brought into court and my examination commenced. After recess, I received five dollars, which next day Mr. Cutter gave me to understand was court-fees, and I signed a receipt for it, which Mr. Cutter made out. The other moneys I received for my services as evidence.]

(All that part of the answer enclosed in brackets objected to, as not responsive to the question.)

Cross-int. 48. Were not the circumstances of the interview substantially thus: Mr. Piper's counsel first met you at the door of Mr. Phillips' office, and after some conversation with you there, and also in Mr. Phillips' private office, in regard to what facts you remembered, Mr. Piper came there and was introduced to you by his counsel, and after some further conversation, Mr. Piper's counsel left you and Mr. Piper together, and went away, and shortly afterwards met you at or near the door of the court-house as you were passing from the direction of Mr. Phillips' office towards Broadway,

839 and stated to you that the counsel were ready to go on and take your evidence at eleven o'clock; and you stated that you would first be obliged to go down to the boat in which you were intending to go to Long Branch, and tell the parties there that you could not go in the morning, but would have to postpone your trip to Long Branch till next day, and that you would be back to the court-house in a few min-

utes, or as soon as you had been to the boat, and then be ready to give your evidence?

(Objected to as to form, as leading, and as also objectionable in attempting to embody the answer in the question.)

Ans. No, sir; most of it is wrong. I said that I would go to the wharf to see Mr. Dodd in the office, and tell him that I was in a law case, and that I would not be able to go until the afternoon boat, which leaves at four o'clock. Mr. Cutter told me the examination would occupy only a few minutes.

Adjourned to August 5, 1869, at 9 o'clock a. m.

AUGUST 5, 1869, at 9½, a. m.

Present, counsel for the respective parties.

Cross-int. 49. Is the wharf you speak of the wharf from which the boat starts for Long Branch?

(Objected to as before.)

Ans. Pier 26, Long Branch boat wharf.

Cross-int. 50. How long were you absent before returning?

(Same objection.)

Ans. Almost three hours. I went from one wharf to the other, and was sent to 944 Broadway, and returned back to the foot of Cortlandt street, to the office, and stated my business to Mr. Taylor, the superintendent. I left there, went to Nassau street, had some dinner, and came here to the court-house, to see Mr. Cutter.

Cross-int. 51. During your absence did you visit the place of business of your brother William?

840 (Objected to as to form, and as leading, and not called out by anything on the cross-examination, and as immaterial and irrelevant.)

Ans. He has got no place of business that I know of.

Cross-int. 52. Did you visit any place where he was?

(Same objections continued.)

Ans. No, sir.

Cross-int. 53. Did you see him during your absence?

(Same objections.)

Ans. No, sir.

Cross-int. 54. How soon after your return to the court-house was your examination commenced?

(Same objections.)

Ans. It is on the records when my examination commenced.

Cross-int. 55. About how soon after your return was your examination commenced? State as near as you can.

(Same objections.)

Ans. I don't recollect. I was hurried up-stairs. Mr. Cutter was waiting for me at the door. I told him what delayed me, going to the boat, to the wharf, from there to Cortlandt street, from Cortlandt street to the offices in Broadway, 944, and from there back to Cortlandt street, and from there to the court-house. I left Mr. Cutter at twenty minutes to eleven o'clock, according to his watch, and it was past one o'clock when I got back here. I then gave him my excuse for being away so long. He said he was waiting for me. He then found Mr. Avery, and went on with my examination. I was asked but a few questions at the examination; and Mr. Cutter and I went out together, after the recess, for refreshments.

Cross-int. 56. Was the evidence that you gave at that examination that day, and the day following, true or false?

(Objected to on all the grounds heretofore stated, and also because the question leaves to the witness to determine whether or not the statements made by him are correct or incorrect by a negative or affirmative answer, and, if correct, implies wilful falsehood; and because it is not open to the complainant to impeach his own witness.)

841 Ans. I came here to rectify mistakes that I made on those two days in my evidence. I have got that right so long as the case is not closed.

Cross-int. 57. Is that all the answer you are able to make to the question?

(Objections continued.)

Ans. By showing me the evidence, I will rectify such mistakes as I have made.

Cross int. 58. At the time you were giving the evidence, did you state what you understood to be the truth?

(Objections continued.)

Ans. In regard as to what particular?

Cross-int. 59. I mean as to all your evidence given.

(Objections continued.)

Ans. Except what I was prompted to.

Cross-int. 60. What particular facts were you prompted to state that were not true?

(Same objections.)

Ans. The fact of there not being an ice-box, or freezer, as Mr. Piper calls it, in that cellar.

Cross-int. 61. Anything else?

(Same objections.)

Ans. That is not correct. It don't finish out the other question.

Cross-int. 62. When question No. 60 was just stated, did you not first reply, "I won't answer that?"

(Same objections.)

Ans. Yes, because my answer would include Mr. Cutter.

Cross-int. 63. Is that your only reasons for making that statement?

(Same objections.)

Ans. Yes, sir; for I was prompted by him, Mr. Cutter.

Cross-int. 64. Do you mean to say, upon your oath, that Mr. Cutter said anything to you in that matter, except to ask you questions in substance when you worked for your brother Joseph, and as to what you saw in his cellar at the time you were working for him, prior to your examination; and as to whether he had a freezer in his cellar at the time you worked for him?

842 (Objected to on all the grounds heretofore stated.)

Ans. Yes, sir; in Judge Phillips' private office, in Chambers st. [He said he had been looking for me since last spring; that he was told I would be a good witness for him, and he wanted me to bear in mind days and dates of my working there for my brother Joseph, and also to the best of my knowledge that I saw no freezer there; and in my evidence given here he made me say I worked year after year for my brother Joseph; which I did not.]

(That portion of the answer included in brackets objected to, as not responsive.)

Cross-int. 65. Do you mean to say, then, that in answer to questions put you by complainant's counsel in your examination, you knowingly misstated some facts?

(Objections continued.)

Ans. I have answered that question before. It includes the first two days of my examination.

Cross-int. 66. How have you answered before the last question put you? Yea or nay?

(Objection continued on all the grounds heretofore stated.)

Ans. That I was here to rectify mistakes that I made during my first examination.

Cross-int. 67. Is that all the answer you are able to make to the last question?

(Same objections as before.)

Ans. I have answered it once.

Cross-int. 68. Immediately after the reading to you of question 64, did you not use the words, "I am not under oath now?"

(Same objections as before.)

Ans. You say I have.

Cross-int. 69. Is that all the answer you are able to make to the question?

(Objected to on all the grounds heretofore stated.)

Ans. In private conversation I used the words, "I am not under oath now."

Cross-int. 70. At the time the first money was paid to you, $5.00, at the close of your first day's examination, who was present?

843 (Objected to on all grounds before stated.)

Ans. It was before the close of the first day's examination. Mr. Cutter and Mr. Piper were present. The money was handed to me by Mr. Piper, but to say nothing of it until the examination was over.

Cross-int. 71. Are you positive that it was not after the close of the first day's examination that you received the $5.00?

(Objected to on all grounds before stated.)

Ans. I think it was previous to the close of the first day's examination.

Cross-int. 72. Where was it paid to you?

(Objected to on all the grounds before stated.)

Ans. Here, by the hall-door leading into the court-room.

Cross-int. 73. Now was it not paid to you in this court-room, at this very table, on which your evidence is being written?

(Objected to on all the grounds before stated.)

Ans. No, sir.

Cross-int. 74. Was there no one else present but Mr. Piper and his counsel when you received it?

(Objected to on all the grounds before stated.)

Ans. There were persons passing up and down through the hall. I did not know who they were. The day I signed the receipt for $5.00, which, they told me, was court-fees, was the following day, and on that day I received $15.00 more on this table for evidence given in this case, as part payment for what I had done so far.

Cross-int. 75. Was the $5.00 received pending your examination the first day?

(Objected to for the reasons heretofore stated, and because the witness has already answered the question.)

Ans. Yes, sir; to the best of my knowledge, it was. It was given to me to go and get some refreshments. He would give me more, only he feared I would be questioned by counsel on the other side whether he had given me money, and he thought I would be obliged to tell; and then, Saturday, he made it appear that I received it as court-fees. I was then handed $15.00, as I stated before.

Cross-int. 76. Were you not told at the time you received the
844 $5.00 on the day of your first examination, that that was for your witness-fees that day, and also for your attendance the next day?

(Objected to on all the grounds before stated.)

Ans. No, sir. Not until Mr. Cutter gave me the receipt on Saturday to sign, I did not know what Mr. Cutter meant by the $5.00. I thought he gave me the money to do what I liked with it; to get refreshments. Mr. Cutter took the money in his hands from Mr. Piper, and Mr. Piper handed it to me.

Cross-int. 77. Do you mean to say that the money was handed to you at the intermission of your examination on the first day?

(Objected to on all the grounds before stated.)

Ans. I answered that question once before.

Cross-int. 79. Do you not remember at that intermission that, immediately upon passing from the court-room, you met your brother William near the court-room door, and, after a few moments' talk with him, passed with him down-stairs to the sidewalk?

(Objected to on all the grounds before stated.)

Ans. I held no conversation with him at all. I would not speak with him. Mr. Cutter had all to say during his presence here in the hall and on the stoop. Mr. Cutter told me not to be afraid of any party; that the law protected me in anything I done for him.

Cross-int. 80. Did you meet your brother William near the court-room door during that intermission?

(Objected to on all the grounds before stated.)

Ans. He was standing at the head of the stairs, and I passed him. He was sitting here at the table before the intermission; he stopped me at the head of the stairs; he spoke pretty loud, and Mr. Cutter took my arm and told me not to mind him. Mr. Cutter asked me to go and take some refreshments. We stood for a moment or two on the stoop, and went to French's Hotel. I paid no attention at all to what my brother William said on that day, Friday.

Cross-int. 81. Did your brother William, on that occasion, say anything to you about getting you arrested as a deserter from the Army?

(Objected to on all the grounds previously stated.)

Ans. I paid no attention to what he said. If he said it, it was in Mr. Cutter's hearing, not in mine.

845 Cross-int. 82. Did you not, subsequently, tell Mr. Piper that your brother William threatened to whip you?

(Objected to on all grounds heretofore stated.)

Ans. What do you mean by subsequently? That gives me to understand I don't know English. I say that Mr. Piper tells an untruth.

Cross-int. 83. Is that all the answer you are able to make to the question?

(Objected to on all the grounds before stated.)

Ans. My answer is given.

Cross-int. 84. At that intermission, did you not also say to your brother William, substantially, that you had been to see him that morning, and waited for him, and he took no notice of you; that it was too late to talk now, because you had told this gentleman, meaning the complainant's counsel, all you knew about the case?

(Objected to on all the grounds heretofore stated.)

Ans. No, sir. If I did say so, I would tell a lie; because the examination had to be resumed again. I had no conversation at all with him.

The only words I used with him were what I have said; I can't unsay it.

Cross-int. 89. Do you mean to say that you signed a receipt for $5.00 the second day of your examination?

(Objected to on all grounds before stated.)

Ans. Yes, sir; immediately after the examination was over on Saturday. The receipt is dated that Saturday. Mr. Cutter can show it.

Cross-int. 90. Are you positive it was a receipt?

(Objected to on all grounds before stated.)

Ans. Yes, sir; given to me to sign, by Mr. Cutter, for two days' attendance at this court.

Cross-int. 91. How many papers did you sign on that day, in relation to this case?

(Objected to on all grounds before stated.)

Ans. I first signed my testimony, and after that I signed the receipt for court attendance, given to me by Mr. Cutter, and retained by
846 him. That was all the signing I did on that day. It was Saturday, the day my examination was finished.

Cross-int. 92. Did you read the receipt?

(Objected to on all the grounds before stated.)

Ans. Certainly, I did; and Mr. Cutter explained the contents of it to me; what was meant by mileage. Mr. Cutter explained to me that I was allowed five cents a mile. He also told me that hereafter I would be allowed $2.50 and mileage for every day's attendance in this case.

Cross-int. 93. Was there anything in that receipt about $5.00, or any sum of money?

(Same objections as before, and also as calling for the contents of a written paper which appears to be in the hands of complainant's counsel.)

Ans. As near as I can recollect, it read for two days' attendance, at $2.50 and mileage a day. He has got the receipt, and can produce it.

Cross-int. 94. Was not the paper merely a certificate of your attendance here, as a witness, for two days, and not a receipt at all?

(Objected to on all the grounds before stated.)

Ans. Mr. Cutter gave me to understand that I should sign that receipt, so that he could have that money refunded to him. It was no certificate. It was a piece of paper he got from the table, about the size of a common envelope.

Cross-int. 95. Besides the money paid you on Friday and Saturday, as stated by you, was any other money paid you by Mr. Piper, in the presence of his counsel?

(Objected to on all the grounds before stated.)

Ans. The money given to me on Saturday, the $15.00, was given while Mr. Piper stood here in the court, on Saturday, by the request of Mr. Cutter. No other money was paid me in Mr. Cutter's presence, but it was through his advice.

Cross-int. 96. If he was not present when it was paid, how do you know it was through his advice?

(Objected to on all grounds before stated.)

Ans. Because Mr. Piper saw Mr. Cutter, before they paid out
847 money to any person, and they both said I should be handsomely rewarded. It was through Mr. Cutter that I received $15.00 from Mr. Piper, in the court-room, on Saturday.

Cross-int. 97. On Saturday, after your examination had closed, were you not requested to find, if possible, the plumber, or man who did the metal-work in your brother Joseph's first freezer? Was it not arranged

and agreed that you should do what you could for that purpose, on Saturday afternoon, evening, and afterwards, and subsequently report to Mr. Piper, on Monday, or some other time, what information you had obtained?

(Objected to on all the grounds heretofore stated, and also as to form.)

Ans. I was requested to find the plumber by the offer of a reward from Mr. Piper to find him. I did not agree to find him for the money I received on Saturday. Mr. Piper was short of money that day, and he offered me a big reward that Saturday if I could find the plumber by Monday or Tuesday. I was to consider myself in his employ, and all lost time was to be paid for. I was to hunt up evidence; I was to report to Mr. Piper or Mr. Cutter. I found out no information about him. Not being at the stand, I did not know who done the work.

Cross-int. 98. How much time, or how many days, did you lose or spend in trying to find the plumber or other man who did the metal-work, on this request of Mr. Piper's?

(Objected to on all the grounds before stated.)

Ans. I did not lose no days or no hours. I had nothing else to do, so I lost no time. In fact, I did not look for him.

Cross-int. 99. Did you not spend any time in Mr. Piper's service, after your examination was closed on Saturday, that week or the following week?

(Objected to on all the grounds before stated.)

Ans. I went into five or six drinking-saloons and one plumber's with Mr. Cutter; that is all the service I did.

Cross-int. 100. Did you not call to see Mr. Piper several times the following week?

(Objected to, on all the grounds before stated.)

848 Ans. I called after him twice. The first time I did not find him. The second time he was behind Mr. Middleton's stand, in Fulton Market.

Cross-int. 101. Did you not represent to Mr. Piper that you had spent a good deal of time for him in trying to find evidence?

(Objected to on all grounds before stated.)

Ans. I done that to get the money that he promised to give me.

Cross-int. 102. Did you not go to Judge Phillips, and get him to send to Mr. Piper, on Wednesday, in the week following your testimony, in order to get more money out of Mr. Piper?

(Objections continued on all grounds as before stated.)

Ans. No, sir; I did not. Judge Phillips wrote a note, which was sealed, to Mr. Piper, requesting me to deliver it. The contents of that note are best known to Mr. Piper.

Cross-int. 103. Did not Mr. Piper, on receiving that note, go to the office of Judge Phillips, and shortly after did you not receive the $25.00 you have spoken of?

(Objections continued on all grounds as before stated.)

Ans. Yes, sir; I received the $25.00. He told me that that finished up all he intended to give me; but that if I could find the plumber he would give me a large reward. As I had not shown any work that I did do, he said he would pay me when I would find the parties that done the plumbing-work.

Cross-int. 104. Did you not want more than $25.00 at that time for what you had done?

(Objected to on all grounds before stated.)

Ans. No, sir.

Cross-int. 105. Were you perfectly satisfied with what you had received?

(Objected to on all grounds as before stated.)

Ans. I got more than I expected to get.

Cross-int. 106. Did you not represent substantially to Mr. Piper that you had a wife and two children to support; that you were poor and out of business, and had lost a chance of business at Long Branch
849 on account of your being delayed in New York on his business, and thus was very much in need of money?

(Objected to on all grounds before stated.)

Ans. In the first part he lies; in the second part, I did lose my situation, and the money he gave me was for my evidence; in the third part he tells an untruth.

Cross-int. 107. Did you not repeatedly ask him for money?

(Objected to on all grounds before stated.)

Ans. He gave me the most of it without asking.

Cross-int. 108. Did you not ask him for money about every time you saw him, and so often as to annoy him, and he stated, in substance, to you, that you had not accomplished anything in finding evidence, and he was unwilling to pay you unless you did find some evidence?

(Objected to on all grounds before stated.)

Ans. No, sir. I never begged money of him. He gave me money without asking. He offered me large sums if I would find them. I pretended I did look for them, and he found it out, and I did not go near Mr. Piper afterwards. The money he gave me on Saturday he gave me himself, and said it would keep me until I got a situation. I have not seen Mr. Piper since that Saturday he gave me the $25.00 until I saw him here.

Cross-int. 109. Where, and on what day, was the $5.00 given you, after the close of your testimony?

(Objected to on all the grounds before stated.)

Ans. I don't recollect the day. It was given to me at Mr. Middleton's stand, No. 71 Fulton Market.

Cross-int. 110. Did you ask him for that money, or any money at that time?

(Objected to on all grounds before stated.)

Ans. He asked me to look for the ice-man. I said if he wanted me to go around New York hunting for this person, he must pay me. He gave me $5.00 and told me to meet him at French's Hotel.

Cross-int. 111. What other money did he give you, and where in that week, besides the $5.00 and the $25.00 you have spoken of?

(Objected to on all the grounds before stated.)

850 Ans. The first $5.00 I received here at the court-house; the second $5.00 at Fulton Market; I received $15.00 here in the court-house; $25.00 below the court-house, in Chambers street; the other sums I received in small sums, I don't recollect where.

Cross-int. 112. Cannot you tell where you received any of those other small sums you speak of?

(Objected to on all the grounds before stated.)

Ans. Well, in a drinking-saloon and in an eating-saloon.

Cross-int. 113. Were any of those other small sums given to you in hand, or were they merely some money paid for your food and drink?

(Objected to on all the grounds before stated.)

Ans. They paid for my food and drink, and liquor, cigars, and car-money.

Cross-int. 114. Are you able to state any sum of money given you by Mr. Piper, except what you have stated in your last four answers?

(Objected to on all grounds before stated.)

Ans. I have answered before.

Cross-int. 115 Is that all the answer you are able to give to the last question?

(Objected to on all the grounds before stated.)

Ans. I have answered before.

Cross-int. 116. Can you, or will you, name any sum of money given you by Mr. Piper, except what you have stated or referred to in answer to question 111?

(Objected to on all grounds previously stated.)

Ans. I answered that question before.

Cross-int. 117. How, and in what answer?

(Objected to on all grounds previously stated.)

Ans. The record shows for itself in the manner I have answered.

Cross-int. 118. Is that the only answer you are able to give to the question?

(Objected to on all the grounds before stated.)

Ans. I consider that answer that I did give is sufficient for all.

Cross-int. 119. At the time you received the $15.00 as stated by you, did you ask for that sum, or any sum of money?

851 (Objected to on all the grounds before stated.)

Ans. I was promised from $25.00 to $30.00 by Mr. Cutter. If he found my evidence was worth any more he would give me more; that he would not give no more money outside of the $5.00 until my evidence was finished; that he was going to leave the court, and I reminded him of his promise; he had some conversation one side with Mr. Piper, and then I received the $15.00 as part payment for my evidence.

Cross-int. 120. Now, sir, are not the facts substantially these: After the close of your examination on the Saturday stated, you asked Mr. Piper for some money to pay you for looking up evidence for the rest of the day, you stating that you would make search and report to Mr. Piper that night or the next morning; that you were going to Long Branch in the Sunday boat; that Mr. Piper said he would pay you when you found the plumber or witness; that you said that you had a wife and two children, and they must have something to eat; thereupon Mr. Piper took out his pocket-book and took therefrom a $5.00 bill and proposed to give it to you; that thereupon you remonstrated, saying you had lost two days attending to this business, and probably lost your place at Long Branch, and you ought to have more; that you had no doubt you could find the witness he was seeking for, and you wanted your pay in advance, otherwise you should leave the matter at once, and thereupon Mr. Piper gave you the $15.00, with a distinct statement to you, by either Mr. Piper or his counsel, that that money was not for witness-fees, but for services to be rendered by you to find the plumber or other evidence for him?

(Objected to on every ground heretofore stated.)

Ans. Ask me these questions separately and I will answer them. There is a dozen questions run into one. I did not ask Mr. Piper for money for looking up evidence for the rest of the day. I stated to Mr. Piper that I would make search and report that night or the next morning. I stated to him that I was going to Long Branch in the Sunday boat; he said to me that he would pay me when I found the plumber or witness. I did not say to him that I had a wife and two children, and

that they must have something to eat. Mr. Piper did not take
852 out his pocket-book and take therefrom a $5.00 bill; he opened his pocket-book; he was about to offer me a small amount, and I told him then of the arrangements me and Mr. Cutter had made, that I was to be paid in full after I had my testimony given. He called Mr. Cutter then. They had some conversation, and then Mr. Piper gave me $15.00, stating that was all he could spare that day. I did not remonstrate, saying that I had lost two days attending to this business, for the reason that I was paid for the two days and signed a receipt for it. I said I had probably lost my place at Long Branch, but I did not say that I ought to have more. I said I might find the witness Mr. Piper was looking for. I did not say I wanted my pay in advance, nor that I should leave the matter at once. Mr. Piper gave me that $15.00 as part payment for my own evidence. I said that distinctly before, three times.

Cross-int. 121. Have you a wife and two children?

(Objected to on all grounds before stated.)

Ans. No; neither.

Cross-int. 122. Have you a wife?

(Objected to on all grounds before stated.)

Ans. That answers.

Cross-int. 123. Have you children?

(Objected to on all grounds before stated.)

Ans. I have answered once.

Cross-int. 124. Do you keep house or board?

(Objected to on all grounds before stated.)

Ans. I am not doing either one.

Cross-int. 125. Were you keeping house or boarding when you first testified here as a witness?

(Objections continued.)

Ans. No, sir.

Cross-int. 126. Did you visit Mr. Piper's hotel that Staturday night, and leave a card for him with writing on it?

(Objections continued.)

Ans. Yes; I left it.

Cross-int. 127. Did you refer to any witness in your writing? If so, who?

8 (Objections continued, and specially objected to that it is not proper to inquire into the contents of a written paper without producing it or accounting for it.)

Ans. I refuse to answer.

Cross-int. 128. Did you lose your place at Long Branch?

(Objections continued.)

Ans. I have already answered that question.

Cross-int. 129. Are you engaged in business at present? If yea, what is it, and where?

(Objections continued.)

Ans. Not in the city. I am engaged nowhere in particular unless attending to this case. My business is deck-hand on the steamboat Magenta.

Cross-int. 130. When did you learn that you had lost your place at Long Branch?

(Objections continued.)

Ans. During the first two days I was giving testimony.

Cross-int. 131. Which of the two?

(Objections continued.)

Ans. The first two days that I gave my testimony.

Cross-int. 132. The question is, which day did you learn the fact, Friday or Saturday?

(Objections continued.)

Ans. Saturday night.

Cross-int. 133. Did you go down to Long Branch on the Sunday following?

(Objected to on all grounds before stated.)

Ans. No, sir; if I had, I would have seen Mr. Cutter there per agreement.

Cross-int. 134. In what business have you been engaged since you received the $25.00 from Mr. Piper?

(Same objections continued.)

Ans. As deck-hand on the steamer Magenta.

Cross-int. 135. Have you that place still?

(Same objections continued.)

Ans. I suppose so.

854 Cross-int. 136. Who got that place for you?

(Same objections continued.)

Ans. The clerk on the dock.

Cross int. 137. Since you gave your former testimony have you had any conversation with your brother Joseph or your brother William about your evidence?

(Same objections as before.)

Ans. Only one, with my brother Joseph. I went to him myself, and told him that I had made a great many mistakes in my evidence, especially as regarded the time I worked for him.

Cross-int. 138. When did you first see him about it?

(Same objections as before.)

Ans. That was yesterday.

Cross-int. 139. Did you see him at his house, or place of business?

(Objected to, on all grounds before stated.)

Ans. [I went to the market to see him. I had business that called me there. My business was from the Stetson House, Long Branch, to him. I saw his clerk, and gave him the order. I afterwards saw my brother Joseph, and told him that I wished to rectify some mistakes I had made in my evidence in regard to the time I was working for him.]

(Answer objected to, as not responsive to the question.)

Cross-int. 140. At what place did you have the conversation with your brother Joseph which you have referred to? State as near as you can.

(Objected to on all grounds before stated.)

Ans. At the market—Centre Market.

Cross-int. 141. Did he ask you to come here and testify?

(Objected to on all the grounds before stated.)

Ans. No, sir; he did not.

Cross-int. 142. Did any one ask you to come here and testify?

(Objected to on all grounds before stated.)

Ans. No, sir.

Cross-int. 143. How came you here?

(Objected to as before.)

Ans. By an order from the court, served by an officer.

855 Cross-int. 144. At any of your conversations with your brother Joseph since you gave your testimony, was anything said about his assisting you in any way, by getting employment for you, or otherwise?

(Objected to on all grounds before stated.)

Ans. No, sir; I have got a situation.

Cross-int. 145. Have you not stated to Mr. Piper that your brother Joseph once tried to get you to testify in this case that he had a freezer, or something to that effect, and that you refused to do so?

(Objected to on all the grounds before stated.)

Ans. No, sir.

Cross-int. 146. Did you not state to me that you first heard of his having a freezer about a year and a half or two years ago, and that you went to his cellar to see it, and to see what it was?

(Objected to on all the grounds heretofore stated, and especially as not open to the complainant at this stage of the examination.)

Ans. Through Mr. Cutter's instructions, I said so.

Cross-int. 147. Were you asked any such questions in the examination?

(Objected to on all grounds before stated.)

Ans. As what, I ask?

Cross-int. 148. As to your first learning of his having a freezer about a year and a half or two years ago, and thereupon going to the cellar to see it and find out what it was?

(Objected to on all grounds before stated.)

Ans. According to his instructions, I did. I never heard the term freezer used until I was here in the court-house, giving my evidence.

Cross-int. 149. When did you work for Dodd's & Studley's Express?

(Objected to on all the grounds before stated.)

Ans. They are two separate companies.

Cross-int. 150. When did you commence working for Dodd's Express, and when did you cease working for Dodd's Express?

(Objected to on all the grounds before stated.)

856 Ans. I commenced last March, I kept no date of the time, working for Dodd's Express, and remained working for them until the day previous to my first examination. The day before my examination I received a note from Mr. Cutter, stating that I was wanted at Judge Phillips' office between the hour of nine and half past nine a. m., without fail, on important business.

Cross-int. 160. When did you commence working for Studley's Express, and when did you cease working?

(Objected to on all the grounds before stated.)

Ans. Well, I commenced working for them about the year 1854. I don't know when I left off working for them. I worked for them several times. The last time I worked for them was during the riots in the summer season of 1863.

Cross-int. 161. Immediately preceding your work for Dodd's Express, for whom did you work?

(Previous objections continued.)

Ans. John Canavan, butcher, 1439 Broadway.

Cross-int. 162. How long did you work for him?

(Objected to on all the grounds before stated.)

Ans. I could not say.

Cross-int. 163. About how long?

(Previous objections continued.)

Ans. I kept no account of the time.

Cross-int. 164. Was it a year or less?

(Previous objections continued.)

Ans. I kept no account of the time.

Cross-int. 165. Was it before or after you learned of losing your place

at Long Branch, that you talked with Mr. Piper about getting a place for you?

(Previous objections continued.)

Ans. No, sir. He spoke of getting me a place.

Cross-int. 165. Was it before or after you learned of losing your place at Long Branch?

(Objected to on all grounds previously stated.)

Ans. It was before.

Cross-int. 166. Did you not first speak to him about it?

857 (Previous objections continued.)

Ans. No, sir; I did not. He proposed getting me a place himself in Boston.

Cross-int. 167. Did not you say to Mr. Piper that you would like to get a place in Boston; that you were sick of this place, and wanted to leave it?

(Previous objections continued.)

Ans. After he proposed it I did so.

Cross-int. 168. Did Mr. Piper tell you he lived in Boston?

(Previous objections continued.)

Ans. No, sir.

Cross-int. 169. Where did he tell you he lived?

(Previous objections continued.)

Ans. He told me to come to the United States Hotel to see him. He gave me his name in full—Enoch Piper—on a piece of paper.

JOHN H. RACEY.

(Adjourned.)

Deposition of Gardiner T. Swartz, taken, subscribed, and sworn to before N. Austin Parks, examiner.

OCT. 15, 1869.

GARDINER T. SWARTZ, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Edw. Avery, esq., of counsel for respondents, as follows, namely:

Int. 1. State your name, age, residence, and occupation.

Ans. Gardiner T. Swartz; age, sixty years last January; residence, Providence, R. I.; occupation, undertaker.

Int. 2. How long have you been engaged in that business?

Ans. Since 1835, I believe.

Int. 3. Please examine the exhibit marked Good's patent for preserving the bodies of deceased persons by cold air, and without the application of ice, No. 921 Spruce st., above 9th, Philadelphia, patented Aug. 17, 1843, and Sept. 12, 1854, N. A. P., Ex'r, and

858 state whether or not you are familiar with the use of that apparatus; and if yea, when you first used it, as nearly as you can state.

Ans. I am familiar with the use of it. I don't remember the exact date when I first used it, but I should think twenty years ago. It was all of that.

Int. 4. State whether or not you have ever used that apparatus for the purpose of freezing any substances or bodies?

Ans. I have.

Int. 5. As nearly as you can remember, please state when you first froze in that apparatus?

Ans. I should think as much as twenty years ago, certainly. I bought a whole set of them for that use.

Int. 6. Please state what you used in the apparatus for the purpose of freezing; that is, what, if any, freezing-mixture?

Ans. Ice and salt.

Int. 7. Have you ever used that apparatus in this way: placing the substance or body to be frozen on the tin false bottom with perforations; elevating that bottom a little above the bottom of the chamber, and filling the pan covering the top of the chamber and setting down into it with ice and salt; and, if so, whether or not the substance or body placed in the chamber has been frozen?

(Objected to as to form and substance.)

Ans. Yes, sir; I have used it both ways. The substance has been frozen.

Int. 8. Describe the manner in which you usually used that apparatus when you desired to freeze the substance or body that was placed in it.

Ans. When we want to quicken or hurry the case, we put the ice in the bottom with salt, leaving out the false bottom, and then put in the body, and apply salt and ice right to the body, not using the top pan, in order to have it work quick. When we want to keep it any length of time, we use it as it is there; that is, put ice and salt in the bottom; then put the false bottom in; then lay in the body, put in the top pan, and fill that with salt and ice. Then we fill the outside groove with water, and put on the top, and shut it down into the water. Then
859 we have a cess-pool-drain in the bottom, as shown in the exhibit; so that when the ice begins to melt, it runs into that cess-pool and makes it air-tight.

Int. 9. What is the purpose of filling the outside groove with water and shutting the covering into that water?

(Objected to.)

Ans. To keep the air from coming in contact with the ice to prevent its melting so quick.

(Answer objected to.)

Int. 10. When the apparatus is charged up in the manner last described, is there any way by which the external air can come in contact with the contents either of the chamber or of the top pan?

(Objected to.)

Ans. None that I know of.

Int. 11. When the apparatus is used in any one of the ways referred to above, does it, or not, freeze the substance or body placed in it?

Ans. It does.

Int. 12. When using the apparatus for preserving the bodies of children by freezing them, may you, or not, omit the use of ice and salt in the bottom of the apparatus, using ice and salt only in the pan placed over the top of the body, covering it, as you have before described, by filling the groove with water and shutting the cover down into it, as you have before described?

(Objected to as to form and substance.)

Ans. Yes, sir; in order to do that, we have crickets that we use to put into the bottom, and place the false bottom on these crickets. That fetches it up to the ice, or rather to the top pan which holds the ice.

Int. 13. When it is used in that way, is there any contact between the air in the chamber in which the body is and the ice and salt in the pan over it?

Ans. Yes, sir; what I mean is that the cold air strikes through the metal—strikes down. There's no other way. The edge of the pan sets down into the water, so that no air can get to the body.

Int. 14. For about how many years have you used the apparatus in the several ways described by you?

860 Ans. As nigh as I can recollect it was in '47 I bought it. I have used it ever since. It has been used to-day with salt and ice.

And in answer to cross-interrogatories propounded to him by Jabez S. Holmes, esq., of counsel for complainant, deponent saith as follows, namely:

Cross-int. 1. Do you mean that you have used an apparatus exactly like the exhibit to which you have referred since 1847?

Ans. I can't see any difference between this and the one I use.

Cross-int. 2. How many apparatus' like the exhibit have you had in use during that time?

Ans. A dozen, I should think. They rust out, and you have to heave them away and get new ones.

Cross-int. 3. How long can you use them before they rust out?

Ans. I can't tell. I have them of copper now, to prevent their rusting.

Cross-int. 4. About how long?

Ans. I should thing they would last two or three years.

Cross-int. 5. Where do they rust, and what is the cause of it?

Ans. The rim outside that holds the water and salt together.

Cross-int. 6. Is there salt in the water in the rim outside?

Ans. Sometimes a little will get in; we don't intend to have any.

Cross-int. 7. What is the effect of the rusting upon the apparatus?

Ans. It rusts out and leaks on to the carpet, and you can't use them. It leaks down on the outside and between the outside and inside cases.

Cross-int. 8. When you first used the apparatus what substance did you use for the purpose of freezing bodies?

Ans. Nothing but ice.

Cross-int. 9. Did you ever use ice and salt to form a freezing-mixture; and if so, when did you begin to use it?

Ans. It was soon after. The way I came to use it was, there was an ice-cream saloon alongside of me, where I had seen a large bin of salt,

861 and inquired the use of it, and they said that by mixing the salt and ice together it froze the cream. I thought if that was the case I would try it with the first body I had to preserve, and found it worked so quick, that I laid in a quantity of salt for that purpose.

Cross-int. 10. What proportions of salt and ice do you use?

Ans. I don't know as we have any rule. We take a box—holding, perhaps, two or three quarts—and spread it on the ice.

Cross-int. 11. You have said, I believe, that you have frozen bodies in an apparatus like the exhibit, by placing the freezing-mixture in the pan at the top, and the body on the perforated false bottom of the apparatus, raised from the floor only, without placing any ice or freezing-mixture under the perforated false bottom; when did you first do this?

Ans. Off and on for most the length of time that I have had them. It was because the ice underneath would melt, and the hole get stopped up, and the body come out wet. That's the reason why I did it.

Cross-int. 12. How often would it happen that the body would so get wet?

Ans. Not very often—but whenever the hole got stopped up—because we kept a watch on it.

Cross-int. 13. In which way do you usually use the apparatus now?

Ans. In both ways, according to circumstances. Some we have to work quick, and some not.

Cross-int. 14. Which way do you use it, when you want it to work quick?

Ans. Take the body and lay it right on the ice.

Cross-int. 15. Under what circumstance do you elevate the body from the bottom, and put no ice underneath?

Ans. When we are noways in a hurry about the body. Another reason is, because when we put the body in, and the ice underneath it, as the ice melts the body sinks, and persons do not like to see the body so far from the glass. That's another reason we use the crickets, to keep the body right there.

Cross-int. 16. How long does it take to freeze the body without the ice underneath it?

862 Ans. I never timed it. I should think an hour or two. I have reduced it below freezing-point, when there was no body in, in fifteen minutes.

Cross-int. 17. Do you mean to say that you have ever frozen a body in an apparatus like the exhibit, putting ice in the top pan, the body elevated from the bottom upon the perforated false bottom, having no ice underneath, in an hour or two.

Ans. I never timed it.

Cross-int. 18. Did you ever in three hours?

Ans. I never timed it; when I did time it, it was just to see how long it would take to cool the air in the preserver.

Cross-int. 19. Would you like to correct your answer to 16th cross-interrogatory? If so, please do so.

Ans. Well, I don't know why I should correct it. It seems to me as if that was the time. I wouldn't be positive about the time. It was more than two years ago.

Cross-int. 20. Did you ever freeze a body, using the apparatus in this way, in less than six hours?

Ans. I think I have.

Cross-int. 21. Do you know you have?

Ans. No, sir.

Cross-int. 22. Do you know you have ever frozen a body, using the apparatus in this way, in less than twelve hours?

Ans. I couldn't say anything about it. As to times and dates, I had rather say nothing.

Cross-int. 23. In less than twenty-four hours?

Ans. I can't remember times or dates.

Cross int. 24. Using the apparatus in this way, within how long time, after closing it up entirely, did you ever open it to see whether the body was frozen or not?

Ans. Well, I know we had a case where it wasn't over twenty-four hours; we tried to get it in a metallic case and couldn't, and had to let it wait till it thawed.

Cross-int. 25. Was this a body of an adult?

Ans. No; of a child.

863 Cross-int. 26. Did you ever freeze the body of an adult in an apparatus like the exhibit used in the way inquired of?

Ans. We have had an idea they were froze.

Cross-int. 27. Did you know that they were frozen?

Ans. No, sir.

Cross-int. 28. Do you know that the bodies of children have been frozen, using the apparatus in this way?

Ans. No, sir.

Cross-int. 29. Have you always put water in the rim?

Ans. No, sir; sometimes they don't require it. If the body is only going to stay in a little while, it's no use to do it, and it depends upon the weather also.

Cross-int. 30. Did you ever have any difficulty in getting out the top pan, when you wished to remove a body, on account of the pan being frozen in?

Ans. No, sir.

Cross-int. 31. Did you ever have any difficulty in using the apparatus with the ice underneath the perforated bottom, arising from the body, the perforated bottom, and the ice adhering together?

Ans. They would be froze together so we could take it out in one lump. That was no difficulty.

G. SWARTS.

Deposition of Otis P. Underwood, taken, subscribed, and sworn to before N. Austin Parks, examiner.

OCT. 15, 1869.

OTIS P. UNDERWOOD, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Edw. Avery, esq., of counsel for respondents, as follows, namely:

Int. 1. State your name, age, residence, and occupation.

Ans. Otis P. Underwood; age, forty-three years; residence,
864 Providence, R. I.; occupation, a boat-builder, but I am now at work house-carpentering. I have also been employed in ship-building and in pattern-making.

Int. 2. Were you at any time employed by the Providence Steam-Engine Company as pattern-maker; if so, when and for how long?

Ans. I was employed there for three years as pattern-maker and general worker of wood. That was from 1865 to 1868.

Int. 3. Were you ever employed in the building of refrigerators; if so, when?

Ans. I was employed by Charles F. Pike in the refrigerator business from 1856 to 1865. I went from there to the Steam-Engine Company in 1865.

Int. 4. While you were so employed in building refrigerators, did you construct, or assist in constructing, for Mr. Pike, a freezer for freezing and preserving animal substances? If yea, when was it?

Ans. Yes, sir; in '56 we made one, or, in fact, Mr. Pike always was experimenting in producing the coldest air in his preservers, or freezers; and we constructed one with an ice-chamber with a metallic box in it—in the ice-chamber. In this metallic box we put the ice and salt, leaving a space all around it for the air to come in and cool against this metallic box which contained the ice.

Int. 5. Have you with you a sketch showing the construction of that freezer? If so, will you produce it and describe it?

(Production of the sketch objected to by complainant's counsel.)

(Here follows diagram, marked page 865.)

Ans. Yes, sir; here is the sketch marked "Underwood Exhibit, No. 1 and No. 2, N. A. P., ex'r." No. 1 is a side view of the freezer. A is a preserving-chamber for holding meat, fish, and any perishable articles to be preserved. B is an ice-chamber, or, rather, the air-space around the

ice-chamber. C is a metallic box, made close and tight for holding ice and salt. D is an opening into external air from the preserving-chamber, with a ventilator-slide, to be opened and closed at will. E is a ventilator to admit the external air into the air-space around the ice-chamber, with a ventilator-slide, to be opened and closed at will. F is the door for putting ice into the ice-chamber C. This door was opened from the top of the external box. G is the lid of the preserving-cham-
867 ber, and opens from the top, the same as the ice-chamber. H is the outside lid, which covered the entire box. J is the drain-pipe and trap to take off the waste water from the ice-chamber, which was so constructed as to allow the water to pass off, and not to allow the air to pass in, as shown in the sketch. K is an opening from the air-space B, to allow the cold air to pass into the preserving-chamber A. L is an opening to allow the air in the preserving-chamber A to pass back into the space C around the ice-box when it becomes warm and lighter than the air below. M is the partition between the preserving-chamber A and ice-box C, making a space, B.

No. 2 is an end view of the same apparatus, showing the opening E, for the external air to pass in and around the ice-box C, and also the slide for closing the opening at will. It also shows the drain-pipe, with trap to take off the waste water from the chamber C.

(Answer objected to.)

Int. 6. You say that the freezer above described was built in the year 1856. After it was completed, did you ever know it to be charged up and put in use; and, if so, with what result?

(Objected to.)

Ans. Yes, it was put in use. It was built as an experiment, taken down into a separate room, and there charged up with ice and salt, and closed from seven in the morning till six at night, a thermometer having been put in it. It was opened at six o'clock, and we found that we got a greater degree of cold from that than anything that we had built before.

Int. 7. Did you ever know of any articles being frozen in that freezer?

(Objected to.)

Ans. Yes, sir; we put in meats, fruit, and fish, and closed it up for a length of time—I don't know how long exactly; and when we opened it we found that the meats was froze and the fish was froze.

Int. 8. What did you use as a freezing-mixture when this result was obtained, and where was it placed?

(Objected to.)

Ans. We used ice and salt placed in the metallic box C.

Int. 9. About what was the size of this freezer?

868 Ans. About sixteen inches one way, and eighteen the other, by two foot six inches deep.

Int. 10. Was there any contact between the ice and salt placed in the metallic box C, and the air in the preserving-chamber A, and the air-space B?

Ans. No, sir.

Int. 11. When the ventilators E and D were closed by the slides, was there any contact between the external air and the air in chamber A and space B?

Ans. No; only that which worked through the lids, which were not perfectly tight; but as near so as they could be.

Int. 12. How were the articles to be frozen placed in the chamber A?

Ans. Laid on racks, and hung up on hooks.

Int. 13. Will you describe the method of using this apparatus when

it was intended to freeze any substances placed in chamber A; how it was charged up, and with what?

Ans. We filled the metallic box C with broken ice and salt, put on the cover, and shut it up and opened the ventilator.

Int. 14. Can you state how long it would take, when the apparatus was charged up, to reduce the temperature below the freezing-point of water?

Ans. I could not. It was closed for a certain length of time, and not opened. I couldn't tell when it arrived at that point.

And in answer to cross-interrogatories by Jabez S. Holmes, esq., deponent saith as follows:

Cross-int. 1. When was this apparatus, which you have described and sketched, made, and by whom?

Ans. It was made in 1856, by me.

Cross-int. 2. Did any one work with you on it; if so, who?

Ans. Nobody. I worked alone on it.

Cross-int. 3. How do you know it was in '56?

Ans. Because I went to work for Mr. Pike the fall before, (1855,) and the next spring I made this apparatus.

869 Cross-int. 4. How do you know you made it the spring after you went to work for Mr. Pike?

Ans. It was about the first work I done in the spring.

Cross-int. 5. How do you know it was the first work you did in the spring after you went to work for Mr. Pike?

Ans. Because we closed work for two months in the winter, and before I went to work in the spring he showed me a drawing of this same apparatus and wanted me to commence on it as soon as we went to work in the shop.

Cross-int. 6. Did you close in the winter every winter while you were at work for Pike?

Ans. Yes.

Cross-int. 7. How, then, do you know it was in the spring of '56 and not in the spring of some later year?

Ans. Because it was the first experiment I worked on for him. I worked on some afterwards.

Cross-int. 8. Was the apparatus made as a model or as a practical working apparatus?

Ans. It was a full-sized practical apparatus.

Cross-int. 9. What do you mean by "full-sized"?

Ans. The common size used for domestic purposes.

Cross-int. 10. Did you ever make another one?

Ans. Yes, sir.

Cross-int. 11. How many more?

Ans. Quite a number. I couldn't tell how many.

Cross-int. 12. As many as six?

Ans. Yes, more; but I don't recollect the number. Couldn't confine myself to any number.

Cross-int. 13. As many as twelve?

Ans. I think I've answered that question all I can. I can't tell definitely.

Cross-int. 14. Do you think you ever made as many as twelve?

Ans. It's no use for me to guess. It would be all guess-work.

Cross-int. 15. Did you make as many as twenty-five?

Ans. I've answered as definitely as I can as to number. I couldn't tell as to that, whether it was six or two hundred.

870 Cross-int. 16. Did you make all that were made while you were there?

Ans. No, sir.

Cross-int. 17. Who worked upon the others?

Ans. I do not know who they were?

Cross-int. 18. Were they made in the shop?

Ans. Yes.

Cross-int. 19. How many workmen were employed there?

Ans. From four to twelve, and they was coming and going all the time.

Cross-int. 20. Do you know that any others were made besides those you made yourself; and, if so, by whom were they made?

Ans. There was others made, but I don't know by whom.

Cross-int. 21. Do you know whether any of them were ever sold?

Ans. No, sir; I don't know anything about that.

Cross-int. 22. How many experiments did you ever see made with any of these apparatus in the way of freezing substances?

Ans. I couldn't give the exact number, but I saw it experimented with a number of times.

Cross-int. 23. What did you ever see frozen in it?

Ans. Meat, fruit, and fish.

Cross-int. 24. Did you see the same articles put in in an unfrozen state and taken out frozen?

Ans. Yes, sir.

Cross-int. 25. Every time, in every experiment?

Ans. Yes, sir.

Cross-int. 26. Were they completely and thoroughly frozen?

Ans. We pronounced them so.

Cross-int. 27. Do you know whether they were or not?

Ans. They was pronounced frozen by all who see 'em.

(Objected to as irresponsive.)

Cross-int. 28. Do you know whether they were or not?

Ans. They was what I call frozen fish and meat, to the best of my judgment.

Cross-int. 29. Were they frozen equally on all sides?

871 Ans. No, not where they came in contact with the rack they laid on; there they was not frozen.

Cross-int. 30. You say the articles were sometimes hung upon hooks; were they then frozen on all sides alike.

Ans. Yes; if they didn't come in contact with the side of the apparatus.

Cross-int. 31. Were the articles in the different parts of chamber A frozen with equal thoroughness, as compared with each other?

Ans. No; those on the bottom was harder, stiffer, than those near the top.

Cross-int. 32. Were those at the end of the chamber A farthest from the chamber C, which contained the freezing-mixture, frozen as hard as those at the end nearest the chamber C?

Ans. No; I think there was a slight variation. Directly under the opening K is the coldest point in the preserving-chamber.

Cross-int. 33. Do you mean to say that the articles near the end of the chamber A farthest, from the chamber C, were not as thoroughly frozen as those at the end nearest the chamber C?

Ans. No, sir; they was not.

Cross-int. 34. How much difference was there?

Ans. Not being a judge, I could not tell how much there was.

Cross-int. 35. How do you know, then, that there was any?

Ans. I could see there was some difference. Those furthest from ice-box C were not so stiff as those nearer to it.

Cross-int. 36. Was the chamber A filled with the substances to be frozen; if not, how nearly was it filled?

Ans. No; there was only a few pieces of each kind put in to try the experiment?

Cross-int. 37. Do you mean at each experiment that you saw?

Ans. Yes, sir.

Cross-int. 38. Were any other experiments made besides those that you saw?

Ans. Not to my knowledge.

Cross-int. 39. Did you ever make, or hear of being made, a larger apparatus than that you have described upon the same principle?

Ans. No, sir.

872 Cross-int. 40. Generally speaking, were the ventilators E and D open or closed during the experiment?

Ans. They were open.

Cross-int. 41. Was there any difference in the effect upon the articles to be frozen, whether the ventilators were open or closed?

Ans. I couldn't tell anything about that. I didn't have anything to do with that part of it?

Cross-int. 42. When the ventilators were open, was there or not a current of air flowing through the preserving-chamber A?

Ans. Yes; it passed in at E, round and under the metallic box C, and out at K into the preserving-chamber A, and out at the ventilator D, and also through the opening L, back into the space B again?

Cross-int. 43. Did you ever see the apparatus used with the ventilators D and F closed; if so, how many times?

Ans. I think I never saw them closed, to the best of my knowledge.

Cross-int. 44. Do you know that they ever were closed?

Ans. No, sir.

Cross-int. 45. What was the object of the partition M?

Ans. It was put in for an ice-chamber, or to form an ice-chamber, to stay the zinc-box to, so that the ice would not crowd it out. It would catch the sweat, if there was any, upon the metallic box C, and carry it off through the waste-pipe.

Cross int. 46. Please explain the action of the waste-pipe, as represented in the sketch, so as to show how it could carry off moisture accumulating outside of the box C.

Ans. The waste-pipe from the space B down is an inch and a half in diameter. The waste-pipe from the metallic box C is one inch in diameter, and the waste-pipe from C runs down into that from B, leaving a space all around the small pipe of one-eighth of an inch.

Cross-int. 47. Did you ever clean out the waste-pipe or have occasion to do so?

Ans. There was a slip-joint at or about the point where the mark is on the pipe J. It was below the mouth of the overflow. I took that off, and cleaned out the sediment.

873 Cross-int. 48. Did you ever see the apparatus used with the chamber C filled with ice alone, and was it ever so used?

Ans. No, sir; not to my knowledge.

Cross-int. 49. In what form did the moisture collect upon the partition M?

Ans. I don't know as it did collect there. To the best of my knowledge I don't think it did.

Cross-int. 50. Was there any moisture, or hoar frost, or ice, upon the articles frozen when they were taken out?

Ans. No, sir; no moisture or hoar frost. They seemed stiff and frozen and dry. The moisture was all taken off by that cold, dry air.

Cross-int. 51. What became of the moisture on the outside of the chamber C, if it didn't collect upon the partition M and wasn't deposited in the chamber A?

Ans. It ran down the sides of chamber C, and down through the waste-pipe.

Cross-int. 52. Was any one besides yourself present at the putting in unfrozen and taking out frozen articles in these experiments? If so, who?

Ans. Mr. Cha's Pike. No one else.

Cross-int. 53. In what season of the year and what year was it?

Ans. I think it was in March, 1856, that all the experiments were made.

Cross-int. 54. What kind of fish were frozen in it?

Ans. I think fresh-water fish of some kind.

Cross-int. 55. How large were they?

Ans. I could not tell whether four or six inches long. They was small fish.

Cross-int. 56. How large were the pieces of meat that were put in?

Ans. Common sirloin steak sliced off.

Cross-int. 57. Did you ever see any larger fish or larger pieces of meat frozen than these?

Ans. No, sir.

874 Cross-int. 58. What kind of fruit?

Ans. There was apples put in there.

Cross-int. 59. How long did it take to freeze those articles?

Ans. I couldn't tell when they first became frozen. They were put in and shut up for ten hours.

Cross-int. 60. Which was most thoroughly frozen—fish, meat, or apples?

Ans. I forget now; but it runs in my mind that the fish were most frozen.

Cross-int. 61. How many apples were there in there, and was there any other kind of fruit?

Ans. Six, eight, or ten. I rather think they were sour apples. No other fruit.

Cross-int. 62. Did you experiment each time with the same articles, and were they all put in and taken out at the same time?

Ans. I don't remember anything else except a bowl of water. Some were put in at night and taken out in the morning, and some put in in the morning and taken out at night. They were all in about the same length of time. The water was not frozen.

Cross-int. 63. Was a bowl of water put in at each experiment?

Ans. No, only once.

Cross-int. 64. Explain the action of the drain-pipe in emptying automatically the ice-box C and chamber B, and was there a continuous flow of water through the drain-pipe?

Ans. The action of the salt upon the ice would melt the ice so that there would be a continuous flow through the pipe all the time.

Cross-int. 65. Was there any moisture upon the side of the ice-chamber C, nearest the partition M? If so, what became of it?

Ans. None that we could see through the opening K and L, which was the only point of observation we had. We could see no frost on it either.

OTIS P. UNDERWOOD.

875 *Deposition of Benjamin Rice, taken, subscribed, and sworn to before N. Austin Parks, examiner.*

OCTOBER 19, 1869.

BENJAMIN RICE, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Edw. Avery, esq., of counsel for respondents, as follows, namely:

Int. 1. State your name, age, residence, and occupation.

Ans. Benjamin Rice; age, thirty-five years; residence, Brighton, Mass.; occupation, poultry-dealer.

Int. 2. Were you at any time in the employ of E. & A. Robbins, in New York? If so, when did you leave there, and how long had you been in their employ?

Ans. I was; I was in their employ, I think, a little over ten years. I left them, I know, just four years the first of next May, that is, in May, 1866.

Int. 3. Did you know Mr. Willett P. Whitson, who was also in the employ of E. & A. Robbins?

Ans. I did.

Int. 4. At any time, while you were with E. & A. Robbins in New York, did Mr. Whitson alter an ice-box which was used in said Robbins' business?

Ans. He did.

Int. 5. Where was that ice-box?

Ans. On the first floor of the store on Beekman street. There was no particular number to this store; it was an old unoccupied place.

Int. 6. State what alterations he made in that box.

Ans. He made a corrugated iron tank to hold ice and salt together. I think it was of corrugated iron. The box was square, and the
876 tank was made about six or eight inches deep, to go the whole length of the box in the back part, up high. That was to contain the ice and salt, so that the poultry and game could be packed in a box below that without being wet with ice or coming in contact with it. I should think the tank was about eight inches or a foot wide; all of a foot, I should say, perhaps more.

Int. 7. Look at the sketch on page 129 of the record of respondents' testimony, and state whether or not that shows the box referred to, when open, looking down into it.

Ans. It does.

Int. 8. When the box was shut, covers down, was there any contact between the air in the preserving-chamber, (*b*,) as shown in said sketch, and the freezing-mixture in the pan (*a*)?

Ans. Yes, sir.

Int. 9. Please state how that contact was obtained.

Ans. The poultry and game was always calculated to be packed below this pan with the ice and salt in. The ice and salt throwing such a cold would preserve that poultry and game perfectly dry and hard—hard enough, in fact, to freeze it. That was the idea of the whole thing—to keep the poultry and game from being wet; to keep it dry and hard.

Int. 10. Was there any cover to the top of the pan (*a*)?

Ans. Yes, sir.

Int. 11. Did that cover shut down so as to cover the whole of the pan (*a*,) or leave any part of it open?

Ans. It shut down so as to cover the whole of this top part.

Int. 12. Was any ice, or ice and salt, placed in the preserving-chamber (*b*)?

Ans. No, sir.

Int. 13. When the pan (*a*) was filled with ice and salt, were the birds and poultry ever frozen?

Ans. After they were put in there, and had been there some time, they were.

Int. 14. About how long would it take to freeze them?

Ans. If I filled the box at 10 a. m., and they were not disturbed, when you went to get them the next morning you would find they were frozen hard and nice.

877 Int. 15. How was it with reference to their being dry or moist?

Ans. They were perfectly dry and nice, as when they were put in.

Int. 16. Can you state about what year it was that this box was used in the manner you have described?

Ans. In 1859.

Int. 17. After this box had been used sometime, was any other freezing-apparatus constructed under Mr. Whitson's direction for the said Robbins?

Ans. There was.

Int. 18. Where was that constructed?

Ans. On the second floor in the same store in Beekman street.

Int. 19. Refer to sketch shown on page 132 of respondent's record, and say whether that is a correct representation of the internal construction of that apparatus.

Ans. Exactly, sir.

Int. 20. Refer to that sketch and describe the construction of that apparatus, as shown in the sketch.

Ans. (*a*) is the corrugated-iron tank for receiving the mixture of salt and ice; the pipes (*b*) are the conductors from that tank for receiving the salt and ice to throw the cold to the whole back of this room, and as it gradually melts, conduct it down into this waste-pipe (*c*). The water was then conducted along the side of the room, through the floor, down into a water-tank on the first floor, and from there into the gutter of the street. (*e*) is the room, with double-bank doors; the space not taken up by the tank and pipes.

Int. 21. How were the walls, and top and floor of the room built?

Ans. They were made with false sides and floor, double.

Int. 22. About how much space between the two, and with what, if anything, was it filled?

Ans. I should think a foot and a half space; filled, I think, with sawdust and powdered charcoal.

Int. 23. How was the room (*e*) entered?

878 Ans. Through a large door filled with the same ingredients, I should think a foot or a foot and a half thick; inside of that was a common board door an inch or inch and a half thick.

Int. 24. Did you have anything to do with the charging up and management of that apparatus?

Ans. I did. The ice was first ground, then mixed with a certain proportion of salt, then hoisted to the third floor of the building and poured through two trap-doors into this corrugated-iron tank. These trap-doors, I call them trap-doors, were made to fit perfectly tight into the floor where they belonged, to exclude all air as far as possible. They were in the third story where we had to hoist the ice to.

Int. 25. Were there any openings in the bottom, sides, or ends of the pan (*a*) into the room (*e*)?

Ans. No, sir.

Int. 26. Were there any openings from the pipes (*b*) and conductor (*c*) into the room (*e*)?

Ans. No, sir.

Int. 27. Have you ever known any articles to be frozen in the room (*e*)? If yea, what?

Ans. I have; poultry and game of all descriptions.

Int. 28. When it was desired to freeze poultry and game in the room (*e*), were the pan (*a*) and pipes (*b*) charged, or filled, and with what?

Ans. They were; with ice and salt.

Int. 29. How were the articles to be frozen in the room (*e*) placed there? In what positions?

Ans. Generally at the back and sides of the room and under these pipes.

Int. 30. Upon what, if anything, were they thus placed?

Ans. Flat on the floor of the room.

Int. 31. Were they separated or put in mass together?

Ans. They were put in mass together, generally in the box together, the package they came in; that is, if it was a large package.

Int. 32. About how long would it take to freeze them when so placed in the room (*e*)?

Ans. It would freeze the top layers in four or five hours; sometimes less.

Int. 33. When the pan and pipes were filled with ice and salt, as
879 you have described, what was the condition of the atmosphere in the room (*e*) with reference to being moist or dry?

Ans. Very dry and cold.

Int. 34. Would there be any gathering on the outside of the pan and pipes? If so, what?

Ans. A hard white frost, a quarter of an inch deep or thick. When it was first filled, and for two or three hours, or you might say half a day, afterwards the pipes were perfectly white with this frost clear to the water-tank on the first floor, there was such a dense cold.

Int. 35. About how large was the pipe through which the water passed down into the water-tank after leaving the pipe (*c*)?

Ans. I should think it was three inches in diameter.

Int. 36. About what size were the pipes (*b*)?

Ans. I should think a foot across inside.

Int. 37. About how large was the pipe (*c*)?

Ans. From eight to ten inches, I should judge.

Int. 38. About how deep into the room (*e*) did the pan (*a*) descend?

Ans. I should think between four and five feet.

Int. 39. When you charged up the pan and pipes with the ice and salt, did you use any means to force the mixture into the pipes (*b*)?

Ans. No; they filled themselves as we filled the pan.

Int. 40. How often was it necessary to renew the mixture in the pan and pipes?

Ans. When we had a large quantity of stuff in the room—once a week.

Int. 41. When you thus renewed the freezing-mixture what was the appearance of it in the pipes? Were they filled solid, or otherwise?

Ans. Sometimes they would be full, and sometimes partly melted away and drained off in the waste-pipe.

Int. 42. About how long was this apparatus used in the manner you have described?

Ans. I think one season.

Int. 43. What do you mean by one season?

880 Ans. If he made it this spring I should call one season the summer and fall.

Int. 44. Was it, in fact, used during a summer?

Ans. Yes, sir.

Int. 45. Were you enabled to freeze articles in it, as you have described, during the summer months?

Ans. Yes, sir.

Int. 46. Did you ever see an apparatus used by Middleton, Carman & Co., in Beekman street, New York?

Ans. Yes, sir.

Int. 47. Did you see it while it was being built?

Ans. I did, sir.

Int. 48. Was it built before or after the one last described by you as having been built by Mr. Whitson?

Ans. It was after.

Int. 49. How many rooms or compartments are there in the apparatus used by Middleton, Carman & Co.?

Ans. There were two.

Int. 50. Was there any difference between the internal construction or arrangement of the two chambers? If so, what?

Ans. Yes, sir; I hardly remember how the further one—the inside one—was constructed, now; but the front one, or the one next the door, had straight pipes from the pan or tank that didn't work to their satisfaction, and proved a failure. It would not freeze or keep their fish dry or in the condition they wanted it. The pipes seemed to shed water, or sweat, so that the fish was wet and damp; and one day they were speaking with Mr. Whitson about it, showing it to him; and he told them it never would work—they never could make it work—till they altered it like his, or got his idea. They went in with him. He showed them the whole internal arrangements of his, and how it was made. They acted on his advice and altered it, and then it worked to their satisfaction; at least I never heard no complaint after, that I know of.

Int. 51. How many times were you in that front room of Middleton, Carman & Co.'s apparatus?

Ans. I never was 'way inside of it. The door was about breast-

881 high from the floor, and you could lean over and look in, or get on your knees and get in. That's the way they generally got in, or would put an empty box on the floor to step on, and then step in.

Int. 52. Have you looked into that apparatus in the way you have described?

Ans. Yes, sir.

Int. 53. When the pan and pipes were charged up?

Ans. Yes, sir.

Int. Did you observe any moisture or water in them?

Ans. I did, sir.

Int. 55. At any time when the apparatus erected by Whitson—I mean the one last described by you—was in use, was it visited by Mr. Enoch Piper? And, if so, did he meet Mr. Whitson there?

Ans. Yes, sir.

Int. 56. Did you hear any conversation between Mr. Whitson and

Mr. Piper about that apparatus and the manner of its construction and working?

Ans. I did, sir.

Int. 57. Can you state that conversation, or the substance of it? If so, please do so.

(Objected to.)

Ans. After Middleton & Carman's freezer had proved a failure they were showing it to Whitson one day when I was there, and showing him the water on the floor, and asking him why it would not work. He laughed at them, and told them if they would go up with him he would show 'em his and tell 'em how to alter theirs so that they would have no more trouble with it. While we were there talking, Mr. Piper came in the store, and after some talk we all went up into Mr. Whitson's freezer, in Mr. Robbins' store. He then explained the whole principles of the apparatus, and showed them the working of it; and told Carman & Middleton and Mr. Piper that their freezer would never work or be worth anything until they took his idea. After that they altered theirs, and then it proved satisfactory, or worked to their satisfaction.

(Answer objected to.)

882 Int. 58. Do you remember a conversation between Mr. Whitson and Mr. Piper, during which the form of the pipes were spoken of? If so, was anything said about having a different form of pipes than straight?

(Objected to.)

Ans. I do remember such a conversation. Something was said about the form of pipe; and that's what they went up to Whitson's freezer to see.

Int. 59. Who first spoke about changing the form of the pipe?

(Objected to.)

Ans. Mr. Whitson did.

Int. 60. What change did he speak of in the form of the pipe?

(Objected to.)

Ans. They asked him up in the freezer how it was that their pipes sweat, or shed water, and his was always covered with frost and so dry, and the floor was so dry too. He told them that their pipes being all one size, that the ice and salt melted away so fast they didn't get cold enough to prevent it, and they never would till they altered their pipes as his was—tapered 'em down. That kept the pipes large at the top and small at the bottom, so that they fed slow and kept this body of cold up all the time.

Int. 61. About how large was the room (*e*) in Mr. Whitson's apparatus?

Ans. I should think from nine to ten feet wide by from thirteen to fourteen long.

And in answer to cross-interrogatories propounded to him by Causten Browne, esq., of counsel for complainant, deponent saith as follows, namely:

Cross-int. 1. You have said that Mr. Whitson's first ice-box was made in 1859; may it not have been in 1860?

Ans. No, sir; I do not think it was.

Cross-int. 2. How do you know that it was in 1859?

Ans. The way I judge it was, is that my boy is just nine years old, and it was when he was an infant or baby that Willett built this second ice-house up stairs.

883 Cross-int. 3. I am not speaking of the second; I am speaking of the first. How do you know that that was made in 1859?

Ans. I couldn't swear positively. That is my belief—my impression. I think that was the year.

Cross-int. 4. How do you know it was not in 1860?

Ans. For the reason I told you. There was no other ice-box of that construction on that floor; no other ice-box of that kind in the store or in use.

Cross-int. 5. What reason do you mean when you speak of the reason you gave me for knowing that the first ice-box was made in 1859?

Ans. The reason I mean is, because it was the year after that the other one was built.

Cross-int. 6. If I understand you, then, you mean that you know the second one was built in 1860, because of the age of your child, and you know that the first one was built the year before that. Am I right?

Ans. The first one would have been in use one season. Willett said he had a bully idea, and was going to rig a big one, as he called it. He done so the next season.

Cross-int. 7. Cross-question 6th repeated.

Ans. That's what I go by.

Cross-int. 8. When was your child born?

Ans. In 1860; in September. I forget the exact day.

Cross-int. 9. And do you mean that you judge the second ice-box was built in 1860, because he was an infant or baby when it was built?

Ans. I couldn't swear whether it was '60 or '61. My impression is what I told you. I couldn't swear positive.

Cross-int. 10. Can you state the year in which Mr. Piper put up for Middleton, Carman & Co. the apparatus with the two rooms or chambers which you have mentioned?

Ans. I could not state the year. I know it was the year after Mr. Robbins had been in operation, or the season after. They had none at the time at all.

884 Cross-int. 11. Do you mean it was the year or season after Mr. Robbins' first ice-box was put in operation?

Ans. I mean it was the year or season after the big freezer had been in operation up stairs.

Cross-int. 12. By the big freezer do you mean the first ice-box or the second one of Mr. Whitson's?

Ans. I mean the second one, built up stairs on the second floor.

Cross-int. 13. And you are positive that that second box, or big freezer, was built in the year or season previous to that in which Middleton, Carman & Co.'s apparatus was put up?

Ans. I am positive that it had been in use for a long time—some months—before Middleton & Carman began to build theirs. I call it a season. They was in and looked at it, and said they was going to build one that would knock it all to pieces. They said they had a great deal better idea than that.

Cross-int. 14. Do you remember the season of the year in which Mr. Whitson's second box was built?

Ans. I think it was early in the spring—early in the season.

Cross-int. 15. Do you remember the season of the year in which Middleton, Carman & Co.'s apparatus was put up?

Ans. I think it was late in the fall.

Cross-int. 16. Are you not mistaken; was not Middleton, Carman & Co.'s apparatus put up in the month of May?

Ans. I think I am positive it was in the fall, because Mr. Robbins' freezer had been at work all that season, and they had been in and out several times and seen it and examined it.

Cross-int. 17. Are you positive that Mr. Whitson's freezer had been up and in use more than a month before Middleton, Carman & Co.'s apparatus was put up? If you say you are, state what makes you positive.

Ans. I am positive it had been to work one whole season. I am positive, because they was up and down there several times; and they told that they were going to get one up, but a better idea altogether than that was; and Willett told 'em they couldn't do it, or he should
885 like to see it after it was done. They wanted to keep striped bass or salmon, and such things, they said, and they was going to get ready for it or build one.

Cross-int. 18. Might not these several visits of Middleton, Carman & Co. to Mr. Whitson's apparatus have all taken place within one month?

Ans. No, sir.

Cross-int. 19. How do you know that?

Ans. I'll tell you how I know it. The first visit they paid there they went up to see it, and Willett showed them a pail of water that they put in there; or they went up after they see the pail of water. This was when he was experimenting with it. He froze a pail of water a quarter of an inch thick, I should think, the first trial. They went up with him and see it and talked about it; and afterwards, when the house was filled, in working order, poultry and game in it, they were up there off and on numbers of times. I remember Mr. Piper went up with 'em first, before they had an ice-house, or ever there was one or anything like it in their building.

Cross-int. 20. Was Mr. Piper up there with them when the experiment with the pail of water was shown?

Ans. No, sir.

Cross-int. 21. Do you remember a temporary apparatus which was in the place now occupied by Middleton, Carman & Co., then occupied by W. M. Rogers & Co., which consisted simply of a box, with zinc pans at the top for freezing-mixture, and pipes to drain off the pickle?

Ans. I do not. They used ice in boxes, fine ice; all I can remember at that time.

Cross-int. 22. What sort of boxes did they so use?

Ans. Fish-boxes—common sugar-boxes that they pack fish in. The ice would melt and drain all on the floor.

Cross-int. 23. You do not, then, remember any freezing-apparatus put up for W'm M. Rogers & Co., at that place, except the apparatus with two chambers which you have described, do you?

Ans. I do not. I never saw any, to my knowledge, until that was put up.

886 Cross-int. 24. Of these two rooms or chambers you say the front one, or the one next the door, had straight pipes from the pan or tank. Are you not mistaken; was it not the other one which had the straight pipes?

Ans. I am not mistaken. After they had remedied that, then they got it to work.

Cross-int. 25. You say that it didn't work to their satisfaction; whose satisfaction?

Ans. Middleton & Carman's. They went up with Mr. Willett—or Mr. Whitson, I should say—to see his afterwards.

Cross-int. 26. Can you state anything which you remember to have been said by either of those gentlemen indicating dissatisfaction with the apparatus; if so, what was it, and which of them said it?

Ans. I cannot remember any particular conversation. I remember their getting Willett into Middleton & Carman's store, and showing him the inside of the chamber; and after some talk they all went up to the freezer in Mr. Robbins' store—up in the freezer there—and he showed them, and explained to them the idea and principles of his, and if they could alter their pipes or cut 'em down—make 'em a conical shape, the same as his was—then they would get it to work. And they did alter it, after that, and it did work.

Cross-int. 27. You mean they did alter it by making the pipes conical, as Whitson's were. Was that the alteration they made?

Ans. I mean they altered it according to what he showed 'em or told 'em; I don't exactly know how.

Cross-int. 28. Do you or do you not know that they altered their apparatus at all?

Ans. I know they did, because they showed me a fish in there afterwards that was frozen, and told me how nice it was. Young Carman himself did.

Cross-int. 29. You say you know they altered their apparatus. Do you or do you not know how they altered it?

Ans. I know they had men there and tore the inside out, and altered it on Willett's ideas; and he was in there when they altered it, telling them how to alter it. I told him I wouldn't tell them or
887 show 'em an idea; for they boasted what they was going to have, and I would let 'em go it.

Cross-int. 30. You say they altered it on Willett's ideas. Will you state what they did?

Ans. I couldn't state what they done particular. I know that he was there showing them; that they altered it or fixed it as he told them, or in a different manner from what it was; and after it was altered they seemed pleased with it, and showed us salmon and other fish froze, and we never heard anything more about it; no other dissatisfaction.

Cross-int. 31. Will you state anything that they did in the way of alteration?

Ans. I cannot; nothing particular, any more than I know they done it, and I was in there talking and laughing with 'em, and told 'em they had to come to Willett's ideas. I understood they altered it right after Willett's; that the pipes were altered to conform to his—took his idea. While they were doing it they were back and forth, up in Mr. Robbins' and down in their store, comparing, and he telling them how to fix 'em.

Cross-int. 32. You say you understood that the pipes were altered to conform to Whitson's idea. What idea do you mean about the pipes?

Ans. Made the same as the pipes in Mr. Whitson's.

Cross-int. 33. How was that?

Ans. A different shape from what they was. Their pipes was one size all through, or straight—the same size up and down; but Willett's pipes were small at one end, fed slower, held the cold and ice and salt longer, generated a keener cold.

Cross-int. 34. What was the amount of the taper in Mr. Whitson's pipes; that is, what was the difference between their diameter at the top and at the bottom?

Ans. I should think it was one-half; may be more, may be less; I couldn't tell exactly.

Cross-int. 35. Do you mean the pipes that led down from the receiving-pan in Whitson's second freezer?

888 Ans. Yes; in the big freezer.

Cross-int. 36. Was Mr. Piper around when these alterations according to Whitson's ideas were going on?

Ans. I know Middleton & Carman brought him up stairs in the freezer once with them, and showed it to him. They was all inside, and Mr. Whitson with them, explaining it to them.

BENJAMIN RICE.

Adjourned to 2¾ p. m.

Deposition of Charles F. Pike, taken, subscribed, and sworn to before N. Austin Parks, examiner.

OCTOBER 20, 1869.

CHARLES F. PIKE, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Edw. Avery, esq., of counsel for respondents, as follows, to wit:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Charles F. Pike; age, upwards of forty-five years; residence, Providence, R. I.; occupation, engineer; since 1855 I have been engaged in the refrigerator business.

Int. 2. State whether or not you have made any experiments for obtaining an apparatus by which artificial congelation can be produced.

Ans. I have.

Int. 3. When and where?

Ans. From 1855 to 1857, in Providence, R. I.

889 Int. 4. Look at exhibits now shown you, marked Underwood Exhibit No. 1, and Underwood Exhibit No. 2, and state whether or not you projected any apparatus of which that is a sketch.

(Objected to as leading.)

Ans. I did.

Int. 5. State when you projected it, and whether or not any apparatus was constructed corresponding to it.

Ans. In the fall of '55 or spring of '56. There was a corresponding apparatus constructed.

Int. 6. Who made it?

Ans. Otis P. Underwood did the wood-work. I don't recollect the man's name now that made the boxes.

Int. 7. When was it constructed?

Ans. I think in '56. We were experimenting all along from '55 to '57.

Int. 8. Describe the apparatus and the method of working it.

Ans. This wooden box, with the ice-box C removed, is what is called a chest-form of a Schooley refrigerator, and, as used as a Schooley refrigerator, the ice was put into the chamber B, and the provisions to be preserved in the chamber A. The operation of it was that the air entered at E, condensed the moisture that was in the air upon the ice that was in chamber B, and as it become cool and dry it passed through the opening K into the preserving-chamber A, and being heavier than the air in the chamber A, it would raise the light air, and it would be attracted by the ice in the chamber B through the opening L, in on to the ice in the chamber B, or it may pass out of the opening in the chamber A, represented by the letter D. G is an inside cover to the preserving-chamber A. F is an inside cover to the ice-box B. H is an outside cover that shuts over the inside covers F and G. M is a wooden partition between the ice-box B and the preserving-chamber A. In this partition M there is an opening four or five inches high, extending the

width of the ice-box B and the preserving-chamber A, at or near the bottom. At or near the top of this partition M there is another opening, an inch and a quarter to two inches deep, extending across the width of the box, represented by L. Sometimes, in constructing,
890 a wire gauze or screen is put over these openings K and L from the ice-box into the preserving-chamber A; and sometimes we put slats up and down in the ice-box B, to prevent the ice from passing from the ice-box B into the preserving-chamber A, and to prevent the ice in the box B from cutting the lining or zinc in the chamber B. The openings E and D were a fine wire gauze, to prevent the flies from entering these chambers. Sometimes they put a slide over these openings, so that they might be shut up close or opened at will, or be left open all the time. J is a trap, put on to a pipe leading from the ice-box, B, through the bottom of the refrigerator, to hold a small quantity of water and prevent the outside air from passing into the chamber B, and also to prevent the cold air in the chamber B passing out into the open air or room where this refrigerator may be placed. C is a metallic box, with a flange at the top, filling the ice-chamber B. There is a space between the outside of this metallic box C and the inside of the ice-box B, of about one and a half inches on the sides, end, and bottom. There is a pipe from this metallic box C, running down into the pipe, that the trap, J, is fastened to. For the purpose of freezing, we placed ice and salt into this metallic box C. The covers were shut down. We put fish, meats, fruit, into the chamber A, shut it up, and locked it up. The ice was broken up about the size of hens' eggs, and there was coarse salt mingled with it. There was also put into the preserving-chamber onions, milk, and butter.

Int. 9. Whether or not, when the chamber C is thus filled with ice and salt, were you enabled to freeze substances placed in the preserving-chamber A?

Ans. We were.

Adjourned to 9½ a. m., 21st inst.

21st—resumed:

Int. 10. What was the condition of the air in chamber A when the apparatus was in operation for the purpose of freezing, as you have described?

Ans. Well, it was below the freezing-point and perfectly dry.

Int. 11. Did you, at any time, project an apparatus for preserv-
891 ing animal substances, in which the meltings or drippings from the ice were retained and used for the purpose of cooling the air?

Ans. Yes, sir.

Int. 12. When?

Ans. Somewhere between the years 1855 and 1857.

Int. 13. Was any such apparatus built and put in use?

Ans. Yes, sir.

Int. 14. Describe its operation, or the operation of that part of it by which you retained the water.

Ans. That was what was called an upright or closet-refrigerator; the door to the preserving-chamber opening in front about three and one-half feet across the front and four feet high. That was divided into two chambers, running from top to bottom. The preserving-chamber was two-thirds and the ice chamber and water-tank one-third. There was a door on the top of the refrigerator for putting in ice; and about half-way between the top and the bottom there was cleats put upon the sides for an ice-rack to rest upon. As the ice melted the

water dropped into the lower part, and there was a cock at or near the bottom, on the front, to draw off the water, as might be required for any use. There was also an overflow-pipe passing up through this chamber and out at the bottom, with a trap on it, so that when the water rose to such a height it would flow down this pipe out into a pan or drain. There were also openings out of the ice-box, or box containing the ice, into the preserving-chamber, the same as described in the Underwood exhibit.

Int. 15. Are you the patentee named in the letters-patent granted to Charles F. Pike, of Providence, R. I., dated June 12, 1866?

Ans. I am.

Int. 16. Was the apparatus heretofore used by the defendants constructed under your superintendence and direction? If so, whether or not it is substantially constructed according to the specification and drawings of said patent, and annexed thereto?

Ans. Yes, sir.

Int. 17. State whether or not the defendants used such apparatus under your authority and license.

892 Ans. They did.

Int. 18. How many compartments were there in defendants' apparatus?

Ans. Four.

Int. 19. Was there in any one of those compartments any removable receiving and distributing pan, such as is described in letters-patent No. 36,107, granted to complainant August 5, '62?

(Objected to.)

Ans. If Mr. Piper is good authority, there was none.

Int. 20. Have you examined the letters-patent so granted to complainant, and do you understand the construction and operation of the apparatus there described?

Ans. I have, and I do.

Int. 21. Referring to the apparatus described in those letters-patent, state whether or not defendants' apparatus has the distributing-pan D in combination with descending tubes B, or the ascending drain-tube F, as therein described.

(Objected to.)

Ans. No.

Int. 22. What is the form and shape of the descending tubes used in defendants' apparatus?

Ans. They are parallel throughout—all of one dimension.

Int. 23. From what do those tubes descend?

Ans. From a pan seven feet square and twenty-four inches deep, and some of them twelve inches deep.

Int. 24. How, if at all, and to what, if to anything, is that pan fastened?

Ans. It is nailed solid to the building.

Int. 25. How are the descending tubes connected with it?

Ans. In some of them they are soldered to it; in others bolted by flanges.

Int. 26. How can the pan be removed in any one of the compartments of defendants' apparatus, so as to be separated as well from the building as from the descending tubes?

Ans. From the descending tubes they can be unsoldered, cut
893 with a cold chisel. That would relieve the pan from the pipe. In other cases the bolts could be unscrewed, the nails withdrawn

from the building that holds the pan, a fall rigged up, and the pan hoisted out.

Int. 27. Can the pan be separated from one set of descending tubes without interfering with the operation and use of the others?

Ans. Not very conveniently.

Int. 28. Have you known large quantities of fish to be frozen at one and the same time in defendants' apparatus, and, after being so frozen, preserved in a frozen state? If so, state the largest number you have known so treated.

Ans. I didn't weigh them myself, but I should say about five thousand pounds. They were preserved, after being so frozen, in the same apparatus. And this is the first machine where fish by the ton, put in green, were frozen and preserved in the same room, to my knowledge.

Int. 29. Do you know Enoch Piper, the complainant? and if so, when and where did you first become acquainted with him, and under what circumstances?

Ans. I am acquainted with him. I was introduced to him first in respondents' counting-room October 12, 1866. He informed Brown & Seavey, the respondents, that he wanted to see me. They telegraphed me, and I came to Boston and met him at their office, and went with him from there to the Hancock House in Court Square.

Int. 30. At the interview with him, at the Hancock House, was anything said by him in regard to the apparatus described in your aforesaid patent? If so, what?

Ans. I had my patent there, with a certified copy of the drawings and correspondence in regard to his two patents. After looking them over he stated that my apparatus was no infringement of his, only in the use of ice and salt in a close chamber.

Int. 31. At that interview did he show to you a letter which he had brought with him from Europe, relating to his alleged invention and the Benjamin & Grafton patent?

894 Ans. He did.

Int. 32. Did you read, or did he read to you, that letter?

Ans. He gave me a description of the Benjamin & Grafton patent, and then stated that this letter was prepared by the attorney that took out Benjamin & Grafton's patent, and it was to his attorneys in this country, stating to them how to evade the Benjamin & Grafton patent.

(Respondents call upon the complainant to produce that letter. No reply is made by complainant's counsel.)

Int. 33. State fully and in detail all that you now remember of the contents of that letter, and whatever Mr. Piper stated its contents to be, together with any description which he gave to you of the Benjamin & Grafton apparatus, distinguishing the one from the other, if you can.

(Objected to so far as it calls for description of the Benjamin & Grafton apparatus; such description being immaterial if it corresponds with the Benjamin & Grafton patent, and incompetent if it does not.)

Ans. Mr. Piper handed me the letter. I took it in my hand and glanced over it. I didn't read it through. He stated to me that the gentleman that took out the Benjamin & Grafton patent, wrote it to enable him or his attorneys in this country to take out his patent. He gave me a description of what the Benjamin & Grafton patent was, and said that Benjamin or Grafton, one of them, was dead, and that what information he did obtain in regard to it he obtained from the brother of the one who was dead. He gave a description of the apparatus as they gave it to him, but said there was no such apparatus in existence then. He described it as a room built of brick, in which they put

troughs, and had cylinders or vessels—tubes or pipes—into which they put their fish, and filled them with water, and put them in these troughs, and buried them in a mixture of salt and ice—or surrounded them with it; that they also had vessels put in that chamber filled with ice and salt, and also a fan within these walls, with its shaft extending through outside of the walls, with a crank to revolve this fan to keep the
895 air in motion. They had slabs there, and baskets; and that the fish to be preserved was laid upon these slabs and put in the baskets to be preserved, and as the frost gathered upon the vessels containing the ice and salt to cool the room, they went inside and scraped the frost from off these vessels and put it upon the fish contained in the baskets and upon the slabs.

Int. 34. Do you remember what, if anything, was said by Mr. Piper at that interview as to the manner in which he proposed to avoid, in his process, the Benjamin & Grafton patent? If so, state it.

(Objected to.)

Ans. He stated that when he returned from England he went to Munn & Co., in New York, and put his papers into their hands, and they made an application to take out his patent, and it was refused; and that he went to see them about the matter, and they advised him to go to Washington with his papers; that they had more talent at the branch office in Washington than at the New York office. He said he went to Washington and put his papers into the hands of the agent in Washington, and they had a real smart fellow there who seemed to comprehend the whole thing, and with the aid of this letter from England he succeeded in getting his patent granted. He also stated to me that the vessels containing the ice and salt, in the Benjamin & Grafton patent, to cool the room, was within the cooling-chamber, while the tubes or pipes in his extended through the top to the outside.

And in answer to cross-interrogatories propounded to him by Causten Browne, esq., of counsel for complainant, deponent saith as follows, namely:

Cross-int. 1. Are you the owner of a certain right under the Schooley refrigerator patent?

Ans. No, sir.

Cross-int. 2. Have you ever been?

Ans. Yes, sir.

896 Cross-int. 3. What was the right, when did you acquire it, and how long did you hold it?

Ans. The right was under the patent granted to John C. Schooley March 13th, 1855, if my memory serves me as to the date of it. I bought it for the State of Rhode Island in the summer of 1855. The assignment is dated in September, '55; and I afterwards bought the right under the Schooley patent for the State of Massachusetts. I held it till some time in '64 *or* '65, I think. That's a matter of record.

Cross-int. 4. While you so held these rights, did you build refrigerators under and according to that patent?

Ans. I caused them to be built.

Cross-int. 5. Who were the actual builders of them?

Ans. Men that I employed, wood-workers.

Cross-int. 6. Did you have any factory or shop of your own, or occupied by you, for the carrying on of that business?

Ans. I had a shop that I occupied.

Cross-int. 7. In which the work of building the refrigerators was done?

Ans. Yes, sir.

Cross-int. 8. Who was your foreman, if you had any?

Ans. I had charge of the business myself.

Cross-int. 9. Did you do any other work in that shop besides the building of these refrigerators?

Ans. Yes, sir. Under that roof.

Cross-int. 10. During the time that you held the rights under the Schooley patent, did you have any other business than the building of the Schooley refrigerators; if so, what?

Ans. Yes. We built steam-engines, machinists' tools, shafting, and other jobs.

Cross-int. 11. About how many refrigerators on an average did you build annually while you held those rights?

Ans. Well, I couldn't say. Some hundreds.

Cross-int. 12. What was the object or advantage of the ventila-
897 tors in the Schooley refrigerators, being, as I understand it, the holes marked E and D, in Underwood Exhibit No. 1?

Ans. The opening at the letter E is to let the air in on to the ice to cool it and dry it before it passed into the provision-chamber A, through the opening K. D is an opening out of the provision-chamber A into the open air. As this air comes in through K, it would rise all the light air in the provision-chamber A, and either pass out through the opening D, or pass on through opening L in on to the ice contained in chamber B. As this light air in chamber A is forced up by the heavier air passing through the opening K, it would be attracted or drawn by the difference of temperature between the box containing the ice and the provision-chamber A.

Cross-int. 13. What is the advantage in a refrigerator of having a current of fresh air constantly passing through it?

Ans. To carry off the perfumes, mould, must, fungus, that would arise from any one or all articles in the chamber, and to keep the air in motion.

Cross-int. 14. Did you invent the making of the upper hole L, in the partition M, as shown in Underwood Exhibit No. 1?

Ans. No, sir.

Cross-int. 15. Did you introduce it into your Schooley refrigerators with a view to improve their operation?

Ans. It was put there to improve the operation. The original Schooley patent of '55 had no opening at the top. We built about a hundred without any opening at the top.

Cross-int. 16. Was not the use of this opening at the top an idea of your own? Was not its adoption by you the result of experiments of yours?

Ans. You may say it was one of my own, and you may say it was one of some one's else. I caused it to be put there.

Cross-int. 17. Did you contrive it yourself in the course of your own experiments upon the refrigerator, or did you borrow the idea from some one else?

Ans. Well, it was put there after experiments that I made, and after-
898 wards it was found out that Fairbanks had applied for a patent on the same plan as that, with an opening at the top and bottom, and that he had applied for a patent for the rotation of the air in a close chamber; and it was refused, and afterwards Schooley got an assignment from Fairbanks, and took out a patent for it.

Cross-int. 18. Cross-question 17th repeated.

Ans. I've answered that question once, I believe.

Cross-int. 19. I think not. Will you answer it again.

Ans. I think that I have answered it.

Cross-int. 20. Do you decline to answer it otherwise than as you already have?

Ans. Unless by advice of counsel.

Cross-int. 21. Your counsel is not present; will you go and see him and ask his advece?

Ans. No. I propose not to fool my time in any such way.

Cross-int. 22. You have answered that the opening was put there after experiments that you made; what I ask you is, whether you contrived it yourself in the course of your experiments upon the refrigerator, or whether you borrowed the idea from some one else; will you answer that question?

Ans. My answer to cross-interrogatory 17 is a complete answer to cross-interrogatory 22.

Cross-int. 23. And you decline to give any other?

Ans. If you'll state what the object is in asking the question, or the answer to be derived from it, I may think that my answer to cross-interrogatory 17 is not a good answer; but, at present, I do decline to give any other.

Cross-int. 24. Did the introduction of the opening at the top of partition M enable you to get colder air in the provision-chamber A?

Ans. Yes, sir?

Cross-int. 25. How much colder?

Ans. From ten to twenty degrees.

Cross-int. 26. Down to what temperature did you get it by introducing the opening near the top of the partition?

Ans. We could put it down to 40 or 48.

899 Cross-int. 27. You say you made about a hundred refrigerators before you introduced this opening; state, as nearly as you can, how many you made with it.

Ans. Well, we made several hundred. I couldn't tell you the exact number.

Cross-int. 28. Did you make altogether, while you held any right under the Schooley patent, more or less than five hundred of the refrigerators?

Ans. I should think that we made more than five hundred.

Cross-int. 29. Should you think you made as many as a thousand?

Ans. I should think we made as many as a thousand.

Cross-int. 30. Should you think you made as many as two thousand?

Ans. I answered that question, that we had made several hundred, and having answered it so, I don't propose to answer any other questions in that line.

Cross-int. 31. Had you, previously to making this opening near the top of the partition, tried various experiments to get the air of your preserving-chamber colder?

Ans. Yes, sir.

Cross-int. 32. Did you introduce the close chamber marked C, in Underwood Exhibit No. 1, in more than one refrigerator?

Ans. I do not know that we did.

Cross-int. 33. And that, you say, was in 1856?

Ans. It was between '55 and '57. I think it was in 1856 that we did that.

Cross-int. 34. Do you remember who made the close chamber C for you?

Ans. I don't recollect now what his name is, but he is dead and gone.

Cross-int. 35. What did you do with this refrigerator in which you put the close chamber, after you got through using it?

Ans. We took the close chamber C out, and sold it, (the refrigerator,) I expect, the same as we did any other refrigerator.

Cross-int. 36. What did you do with the close chamber after you took it out?

900 Ans. I don't know; but I suppose it was used to line up some ice-box with.

Cross-int. 37. It would have to be taken to pieces to so use it, would it not?

Ans. No.

Cross-int. 38. Do you remember how long it remained in the refrigerator?

Ans. I do not.

Cross-int. 39. What was the size of the apertures, or ventilators, represented by A and D, in Underwood Exhibit No. 1?

Ans. As my recollection serves me, about four inches by six-eighths of an inch.

Cross-int. 40. Did Brown & Seavey ever apply to you to build them a refrigerator for freezing fish? If so, when?

Ans. They did; and, if my judgment serves me, the first conversation was in '60 or '61, or it might have been later than that, '62.

Cross-int. 41. Did you describe to them your experiment with the close chamber C?

Ans. I suppose so.

Cross-int. 42. Did you give them a price for such a refrigerator as they required, or as you would build?

Ans. I gave them no price. I did not build their refrigerator.

Cross-int. 43. Did you make an affidavit in this case on the 1st of December, 1866, in which you said as follows: "Some time about 1862, in the early part of the year, Messrs. Brown & Seavey applied to me to build a refrigerator for freezing fish. I communicated the result of my experiments to them, and after having considerable conversation with them, I finally gave them a price for such a refrigerator as they required. Nothing further was done about it, until 1865 or '66, when I prepared my papers, and applied for my aforesaid patent, and proceeded to build the refrigerator now in use by them at Charlestown?"

Ans. I did.

Cross-int. 44. You did not build for them the refrigerator they first applied for, as mentioned in the passage quoted, did you?

901 Ans. I did not.

Cross-int. 45. Look at the letter now shown you and hereto annexed as an exhibit, marked Pike Exhibit No. 1, N. A. P., Ex'r, and say whether you wrote that letter to Mr. Piper at the date which it bears?

Ans. I wrote that letter, I suppose, at that date.

Cross-int. 46. In your 14th answer you describe an apparatus for preserving animal substances which you say was built and put in use; was it built for Brown & Seavey, and put in use in their place?

Ans. No, sir, it was not.

Cross-int. 47. Where was it put in use?

Ans. It was built for my own use, and put in use at Providence.

Cross-int. 48. When?

Ans. Between July, '55, and July, '57.

Cross-int. 49. Is it there now?

Ans. I suppose it is. It was the last I knew of it.

Cross-int. 50. In use now?

Ans. I suppose it is.

Cross-int. 51. By yourself, or your employés?

Ans. No, sir.

Cross-int. 52. By whom?

Ans. I suppose—I don't know the fact—I suppose in Charles E. Carpenter's house.

Adjourned to 3 p. m.

Resumed:

Cross-int. 53. Are the four compartments in defendants' apparatus, which you say was built under your superintendence and direction, all as they were when they were first put up?

Ans. I think that two of them have been altered.

Cross-int. 54. As originally put up, were they alike, as regards the connection of the receiving-pan with the descending tubes?

Ans. They were, if my memory serves me.

902 Cross-int. 55. Was not the first one altered in that respect after it was put up?

Ans. Not to my knowledge.

Cross-int. 56. The first one was built according to the drawings, as shown in your patent; was it not?

Ans. Yes, sir.

Cross-int. 57. Were the others built differently from the first one; if so, in what respects?

Ans. They was constructed so that they could be taken apart and put up easier. That was all the difference I recollect. Instead of soldering the pipes to the receiving-pan and to the tank or pipes below, it was so constructed that the up and down pipes could be connected with the base pipes and tank with bolts?

Cross-int. 58. Was it constructed with flanges for that purpose?

Ans. Yes, sir.

Cross-int. 59. As so constructed, could it be readily disconnected, so that a couple of men could take it all apart in one hour's time?

Ans. My judgment is that I could take a man with me and take it apart in an hour's time.

Cross-int. 60. The reason for the difference between the construction of these compartments and the construction of the first one of the four was that some difficulty had been experienced in the operation of the first one, so as to get the desired degree of cold in the chamber, was it not?

Ans. Not to my knowledge.

Cross-int. 61. Was there in fact any such difficulty experienced in the use of the first one put up?

Ans. Not to my knowledge.

Cross-int. 62. Did you in your affidavit before mentioned, dated Dec. 1, 1866, speaking of the freezing-apparatus which you put up for the defendants at Charlestown, say this: "The ice-box and the water-tank are connected together by upright tubes or pipes, the same as a tubular steam-boiler, with the difference that these tubes or pipes have flanges on them, so that you can unscrew the bolts and

903 take out a pipe, or clean out the water-tank. The first one was not built so, but was built according to the drawings as shown in my patent. The reason for the altering of it was, that after the first one was built we put it in operation, and found that we could not get the rooms cold enough. We used a large quantity of salt mingled with ice, but, the salt not being of the right quality and in proper propor-

tion, we could not reduce the thermometer below the freezing-point. We found that, although we mingled salt with ice, it did not produce a freezing-mixture, but this ice and salt congealed in the water-tanks, pipes, ice-box, or receptacle, so that we had to pick it up with a pick, and use water in order to thaw the ice and get it out of the pipes. We had to put a stream of water into it and open the clean-out pipe from the water-tank, and then it was a long time before we could get the water through to melt the ice and salt in the pipes or tubes. The last one built was built with flanges, so as to disconnect readily, and enable a couple of men to take it all apart in one hour's time?"

Ans. I did, and it is a matter of record, and I wish to explain it. [They charged that chamber or room up with salt and ice, using fine salt. I objected to their so doing, stating to them that they should use the coarsest and heaviest salt they could get. I come here and assisted in removing the ice and salt from the tank, tubes, or pipes, and it was recharged up under my own supervision with ice and salt, and that is the coldest room of the four contained in that apparatus. And the object of putting in the flanges and bolts was that it might be put up more readily and taken down, and that we shouldn't have to have a fire about there, because there was a lumber-yard there, and they objected to our having a fire in a pot to heat the irons to solder the tubes. And another and more important reason was, that the last one was built at Providence, and could be more easily transported in pieces than as a whole. Those are the reasons why it was made in pieces; not that it would work any better or produce one degree less of cold. And I wish further to add there that the room in which the first apparatus
904 was put will freeze as quick, if not quicker, with the same number of pounds of fish contained therein, as either of the other rooms.]

(Passage in brackets objected to.)

Cross-int. 63. Were all the compartments originally constructed with the water-tank mentioned in your patent and lettered C in the drawings?

Ans. No.

Cross-int. 64. How many were originally so constructed?

Ans. One.

Cross-int. 65. Was that the first one?

Ans. Yes, sir.

Cross-int. 66. Has that one got the water-tank in now?

Ans. It has, or had when I saw it last—a year or two ago.

Cross-int. 67. Were the other three constructed with horizontal tubes instead of the water-tank?

Ans. They have got a horizontal water-tank.

Cross-int. 68. Have they got horizontal tubes?

Ans. You may call them tubes—they are round pipes.

Cross-int. 69. Are these what you refer to when you speak of their having a horizontal water-tank.

Ans. They be.

Cross-int. 70. Were all the four compartments or rooms constructed with the pump for the purpose of keeping up artificial circulation mentioned in your patent?

Ans. Well, I don't recollect now. I don't know but all of them were.

Cross-int. 71. Was it taken out from any of them?

Ans. I don't know as it was.

Cross-int. 72. Did you ever hear from Brown or Seavey that it had been?

Ans. They never stated to me that it had been.

Cross-int. 73. Did you ever hear from anybody that it had been?

Ans. I've no recollection of it now.

Cross-int. 74. Did you ever hear from Brown or Seavey whether they made any use of the pump or not?

905 Ans. I don't know as they've ever stated to me whether they made any use of it.

Cross-int. 75. Should you recognize, if you were to see it, the letter which you say Mr. Piper showed you in your interview with him at the Hancock House in October, 1866?

Ans. I think I should.

Cross-int. 76. Look at the letter now produced, and marked Pike Exhibit, No. 2, N. A. P., Ex'r, and say if that is the one.

Ans. I have read the letter referred to in the above question, and do not think it is the one shown me at the Hancock House.

Cross-int. 77. Did not Mr. Piper tell you, in the course of this same conversation, that he had ascertained in England that the Benjamin & Grafton apparatus had proved practically a failure, and that the parties engaged in using it had lost a thousand pounds by the experiment, or words to that effect?

Ans. Mr. Piper had conversation with me with regard to that patent; but I've no recollection now of his stating to me that it had proved a practical failure, or that the parties using it had lost one thousand pounds. [I will take a machine constructed according to the Benjamin & Grafton specification, and I will freeze and preserve fish as well as in either of the patents granted to Enoch Piper. And the word vessel, as described in the Benjamin & Grafton patent as being filled with ice and salt, according to the meaning of that word by Webster, may be a tube, a pipe, or any hollow vessel.]

(Passage in brackets objected to as irresponsive.)

Cross-int. 78. Look at the letter marked "Pike Exhibit, No. 3, N. A. P., Ex'r.," and say if that is the one Mr. Piper showed you at the interview at the Hancock House?

Ans. I should say it was not the one.

(Adjourned to 9 1-2 a. m., 22d inst.)

CHARLES F. PIKE.

906 PIKE EXHIBIT NO. 1.—N. A. P., EXAMINER.

BOSTON, *July 16th*, 1862.

ENOCH PIPER, Esq., *Camden, Maine:*

DEAR SIR: I understand that you have a "patent refrigerator;" will you please inform me of the date of the patent, so that I can get a certified copy of it from the Patent-Office? Please direct answer to me at Providence, R. I., and

Oblige yours,

C. F. PIKE,
Owner of Schooley's patent for the New England States.

PIKE EXHIBIT NO. 2.—N. A. P., EXAMINER.

OFFICE FOR PATENTS, 66 CHANCERY LANE, (W. C.,)
Dec. 19th, 1860.

DEAR SIR: I have carefully read the specification of Benjamin & Grafton's patent, dated January 27th, 1842, and compared the apparatus therein described with the apparatus which you propose to patent for

the purpose of preserving animal and vegetable matters. I find that this specification is not such a detailed description as would enable a mechanic, without considerable ingenuity, to construct a cooling-chamber that would answer the purpose of the invention; and with respect to the mode of effecting that very important operation—applying the freezing-mixture to the chamber—I find the specification silent;
907 leaving it to be presumed that access is obtained to the metallic vessels contained therein which are to receive the mixture, by a man-hole or door, and that the like contrivance is made use of for clearing these metallic vessels of frost and keeping the metallic surface exposed to the air that is caused to circulate around them.

The plan which you propose to employ for supplying the freezing-mixture (involving, as it does, no access to the chamber) appears to me to develop a new principle of construction (so far as this patent is concerned) in cooling or freezing chambers, and I think that no objection to an application for a patent for such contrivance could for a moment be maintained at Washington on the ground that you were anticipated by Benjamin & Grafton's invention. You should, in my opinion, confine your claim to chambers constructed so as to be supplied with freezing mixtures without opening a communication between the interior of such chambers and the surrounding atmosphere, your object being, when once the chamber is filled with provisions, to close it air-tight, and leave it undisturbed until the provisions are required to be removed.

I am, dear sir, your obedient servant,

A. V. NEWTON.

Mr. ENOCH PIPER.

PIKE EXHIBIT NO. 3.—N. A. P., EXAMINER.

OFFICE FOR PATENTS, 66 CHANCERY LANE,
Dec. 31, 1861.

DEAR SIR: We return the copy of Grafton & Benjamin's specification as requested. Should our services be required at any future time in relation to this or any other patent business, your instructions will meet with our immediate attention.

Yours, truly,

NEWTON & SON,
Per J. W. MOFFATT.

Mr. ENOCH PIPER, 116 *Duke street, Liverpool.*

908 *Deposition of Hervey Waters, taken, subscribed, and sworn to before N. Austin Parks, examiner.*

OCT. 22, 1869.

HERVEY WATERS, being duly sworn, doth depose and say, in answer to interrogatories propounded to him by Edw. Avery, esq., of counsel for respondents, as follows, namely:

Int. 1. State your name, age, residence, and occupation.

Ans. Hervey Waters; age, sixty-five years; residence, Boston, Mass.; occupation, machinist.

Int. 2. State what your experience has been in the examination and comparison of mechanism, upon questions of identity or difference arising thereon.

Ans. For the past twenty years I have had a good deal of experience in the comparison of mechanisms in the trial of patent causes.

Int. 3. Have you examined letters-patent granted to Enoch Piper, the complainant, dated March 19th, 1861? If so, do you understand the process of preserving fish therein referred to and described?

Ans. I have examined the patent inquired of, and believe I understand the process therein described for preserving fish.

Int. 4. Have you examined the specification of the patent granted to Henry Benjamin and Henry Grafton, of England, in the year 1842, enrolled July 27, '42, and numbered 9240, and do you understand the process for preserving fish and other substances as therein described?

Ans. I have examined the specification referred to, and I believe I understand the process described therein.

Int. 5. State whether, in your opinion, the method or process described in the specification last referred to is substantially like,
909 or unlike, that described in the plaintiff's patent, before referred to, and give the reasons for your opinion.

Ans. I consider the process of preserving fish, as described in the patent of Benjamin & Grafton, substantially the same as the description by Piper in his patent of March 19, '61; because that in both patents substantially the same means of preservation are used. I do not mean by this that in both patents substantially the same apparatus is used, or that in both patents the manipulations for preserving the fish are precisely the same; but I do mean to state that in both patents the fish are preserved by substantially the same means, because that, according to both patents, the fish are frozen artificially by the same means, that is, by the thawing of ice, by means of salt, thereby extracting the caloric from the surroundings of the fish, and consequently from the fish themselves; and in both patents, after the fish are thus frozen, they are kept frozen by a continuation of the same means of freezing, and also such continuation is kept up while the fish themselves are kept from contact with the oxygen of the atmosphere, and are also kept from any contact with the freezing-mixture; these being the essentials, as I understand it, for the preservation of the fish for a great length of time. The apparatus described by Piper, in his patent, differs from the apparatus described in the Benjamin & Grafton patent, and is more convenient for the purpose of preserving fish than the apparatus of Benjamin & Grafton. But I do not consider that thereby the process is changed; and I come to this conclusion by comparing not only the apparatus of Benjamin & Grafton with Piper's, but the double apparatus described by Piper himself in his patent, in which he has described an apparatus for freezing the fish, and an apparatus for preserving them after they are frozen. For I suppose that the fish may be frozen in either of the two apparatus described, or that they may be preserved after they are frozen in either of them; but one of them is more convenient than the other, and the manipulations necessary to the process vary considerably in the two. But for that reason I cannot consider that the process varies, because each has the essen-
tials necessary to carry on the process, to wit, the essentials nec-
910 essary to freezing, and the essentials necessary to keep the fish frozen, and to keep them from contact with the atmosphere, and from coming in contact with the freezing-mixture itself. So, also, in regard to another patent granted to Piper, which I have seen, for an "improvement in apparatus for preserving animal and vegetable substances," dated August 5, 1862, numbered 36107; in which the patentee says: "My present invention is an improved apparatus for the better carrying out of the method of preserving fish and other articles, for which letters-patent were granted to me bearing date the 19th day of

March, 1861," etc. Now, I understand, with the patentee, that this is an improved apparatus for that purpose, and I know that by it the manipulations are different from the manipulations described in the Benjamin & Grafton patent, or in either of the apparatus described in Piper's patent of 19th March, '61; but nevertheless I believe that in all these patents the process described is substantially the same.

Int. 6. In the complainant's patent first referred to—that of March 19, 1861—and the Benjamin & Grafton patent, a preliminary freezing process is described; will you state whether, in your opinion, the preliminary process described in the two patents are, or are not, substantially alike?

Ans. I believe I have already stated that in my opinion the process for preliminary freezing was the same in both cases; but if I have not so stated, I will now state that I consider them substantially the same; because that, according to both patents, the fish are frozen artificially by the thawing of ice, by means of salt, thereby extracting the caloric from the surroundings of the fish, and consequently from the fish themselves.

Int. 7. Have you seen an apparatus marked "Good's patent for preserving bodies, etc., N. A. P., Ex'r"?

Ans. I have.

Int. 8. The apparatus last referred to being used in the following manner, namely, placing the substance to be frozen on the perforated false bottom elevated above the bottom of the box, the pan setting over and into the chamber in which the substance is placed, filled with ice and salt, and the outside groove filled with water, and the
911 outside cover put on, so as to exclude the external air from all contact with either the freezing-mixture or the substance to be frozen, and so continued long enough to freeze the substance in the chamber, does this process differ substantially from the preliminary process of freezing described by Piper in the patent of March 19, '61?

Ans. It does not.

Int. 9. Have you read the deposition of Joseph H. Racey, jr., taken in this case, and have you seen the apparatus described by him in such deposition, and stated by him to be in a cellar under Centre Market, in New York; and have you read his statement of the manner in which that apparatus was used for the purpose of freezing and preserving animal substances in a frozen state?

Ans. I have.

Int. 10. State whether, in your opinion, the method or process of freezing so carried on, as described by him in that apparatus, is substantially like or unlike that described in Piper' patent of March 19, 1861.

Ans. It is substantially like it. As an apparatus, it varies slightly from Piper's.

Int. 11. You have already referred to the letters-patent granted Enoch Piper, dated August 5, '62; have you examined the same, and do you understand the construction and operation of the apparatus therein described?

Ans. I have, and I do understand it.

Int. 12. State whether or not, in your opinion, any portion of the apparatus therein described is, in its construction, substantially like any part or portion, and if so, what, of the apparatus described in the first patent of Piper—that of March 19, '61—and give your reasons for such opinion.

Ans. In my opinion a very large proportion of the apparatus described in the second patent is like that described in the first patent; the dif-

ferences being mainly what is set out in the second patent as new and referred to in the claims. But there is one difference set out in the second patent which is only specifically new, where the patentee says,
912 "My invention, by retaining the cold brine in the tube C and the lower end of the tubes B for a certain period, accomplishes an effect beyond what would be obtained by simply holding the ice-water in a similar manner in the base of an ordinary refrigerator, because the brine which descends from my freezing-mixture is not at the temperature of 32° F., like ordinarily melted ice, but is far colder, and still capable of producing a refrigeratory effect on the contents of the structure. My invention, by reason of the elevation of the tube F, holds back in the tubes C and B not simply water, which only stops the circulation of air, but also utilizes the cold in the brine, which is an effect never before obtained, as I am aware." Now this statement, as far as regards a refrigerator where only ice is used, is true, for ought I know; but, regarding the first patent to Piper, of March 19, '61, it is not broadly true, in my judgment. Because, in one of the apparatus described by Piper, where the pans containing the ice and salt are placed over the fish, the brine which will accumulate in the pans will produce the same effect, as far as its cooling qualities go, that will be produced by the arrangement in the second patent, to which the quotation relates. And, besides, in the other apparatus, described by Piper in his first patent, where pipes are used to contain the freezing-mixture, the same effect is obtained, and in a manner much more analogous to the manner described in Piper's second patent. In the first patent, on referring to the description of the large preserving-box C will be found the following: "Passing through the inner box are metallic tubes, D, which are open at the upper ends for the introduction of a freezing-mixture, the lower extremities being formed with flanges, which are secured to the bottom of the box. A small pipe, F, leads from the bottom of each tube D to the outside of the outer box—the object of said pipes being to draw off the brine from the tubes D as often as required. When not used for this purpose, the pipes are stopped by any suitable means at their outer ends." Now, the effect of this mode of operation is to set back the brine into the body of the large pipes, so as to cool the chamber of the apparatus in substantially the same manner as the setting back of the brine in the apparatus referred to in the quotation from the second patent. The manner of flowing back the brine in the second patent is different, because
913 the drainage being by an overflow pipe in the second patent, the flowing back of the brine will be continuous and uniform, while the manner of flowing back in the first patent was only periodical, the pipes being stopped and opened as therein described.

Int. 13. Have you seen and examined the apparatus of the defendants, at Charlestown, referred to and described in the deposition of William Seavey, taken in this case, and that of H. B. Renwick?

Ans. I have.

Int. 14. State how far, if at all, you find in that apparatus of the defendants, the removable receiving and distributing pan D, and the drain-tube F, described and shown in complainant's second patent, that of August 5, '62.

Ans. I do not find them at all.

Int. 15. Referring to the sketch produced by W. P. Whitson, and shown on page 132 of the respondents' testimony, and the description given in the deposition of said Whitson in this case, as to the manner in which the pipes *b* are connected with the pan *a*, will you state whether or not, in your opinion, there is any substantial difference between the manner

of connecting or removing those pipes *b* from the pan *a*, and the manner in which the pipes B are connected with, or removed from, the pan D, as described and shown in the drawing and specification annexed to complainant's second patent of August 5, '62?

Ans. There is a difference in the two descriptions, but that difference is only specific; taking the two descriptions broadly, and looking to the convenience of distributing the freezing-mixture in the pipes by the use of the pan, the two descriptions are substantially the same. Looking to the convenience of removing the tubes or pipes for the purpose of washing them out, and similar purposes, both are substantially the same. But in complainant's patent referred to, the pan is removable, while in the apparatus by Whitson the pan is not removable. So also the drain-pipe combined with the pan in the complainant's patent is different from the drain-pipe described by Whitson.

Int. 16. Please examine model marked "Piper Exhibit No. 4," and state whether, in your opinion, it is like, or unlike, the apparatus described in the Piper patent of August 5, 1862, and give your reason for your opinion.

914

Ans. It is unlike the apparatus described in that patent. The model No. 4 is incomplete for any purpose of preserving fish, as I understand it. There seems to be two chambers; at any rate there are two compartments of tin, surrounded by a wooden box; but this model contains what is evidently intended to represent removable distributing pans, in connection with pipes for containing the freezing-mixture. The arrangement for drainage here is essentially different from the arrangement described in the patent. The pipes would drain into the bottom of the larger compartment, which constitutes a pan to receive the drainage, from which the brine would flow out of an aperture near the bottom of the outer compartment and below the bottom of the inner compartment; so that the brine would not flow up to the inner compartment, and therefore this apparatus does not contain the feature of cooling the inner compartment by the brine, set out as a novelty in the patent, in the quotation which I have made from that patent, beginning as follows: "My invention, by retaining the cold brine in the tube C," etc. Besides, the tubes in this apparatus appear to be substantially of the same size throughout; which is not the case in the apparatus described in the patent, they being there represented as larger at the top than at the bottom. There is no drain-pipe such as is represented in the patent.

Int. 17. Did you find in the defendants' apparatus, at Charlestown, the arrangement described in complainant's patent of August 5th, 1862, in the following language: "The employment in refrigeratory apparatus of the removable receiving and distributing pan D, in combination with the series of descending tubes B, and suitable means of continuously draining the same, substantially as and for the purpose herein described?"

Ans. I did not.

Int. 18. Did you find in that apparatus the arrangement described in the complainant's said patent in the following language: "In refrigeratory apparatus the arrangement of the open ascending drain-tube F, relatively to the tubes C and B, in the manner and for the purpose herein set forth?"

915

Ans. I did not.

(Counsel for complainant declines to cross examine.)

HERVEY WATERS.

916 OCTOBER 15, 1869.

Counsel for respondents here puts in evidence in this case a certi-

fied copy from the U. S. Patent-Office, of the file-wrapper and contents in the matter of the letters-patent granted to Enoch Piper, March 19, 1861, No. 732.

(Objected to.)

Also, a certified copy from the U. S. Patent-Office of a letter, dated April 13, 1869, to Enoch Piper, from S. T. Shugert, Acting Commissioner.

(Objected to.)

Also, a printed official copy of letters patent granted to Henry Benjamin and Henry Grafton, No. 9240, inrolled July 27, 1842, for "improvements in preserving animal and vegetable matters."

Also, letters-patent of the U. S. granted to John Good, dated 12 December, 1844, for an "improvement in coffins."

Also, letters patent of the U. S. granted to Charles F. Pike, dated June 12, 1866, for an "improved refrigerator for cooling oil," etc.

DEFENDANTS' EXHIBIT No. 1.—R. E. S., U. S. COM.

The United States Patent-Office, to all to whom these presents shall come, greeting:

This is to certify that the annexed in a true copy from the records of this office of the design, letters-patent granted John Good, dated August 17, 1843, No. "6."

In testimony whereof, I, A. M. Stout, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed, this fourteenth day of May, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-second.

A. M. STOUT.

917 (No. 6.)

The United States of America to all to whom these letters-patent shall come:

Whereas John Good, of Philadelphia, Pennsylvania, has alleged that he has invented a new and useful improvement in design for corpse-preserver, which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of fifteen dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant according to law to the said John Good, his heirs, administrators, or assigns, for the term of seven years, from the seventeenth day of August, one thousand eight hundred and forty-three, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said John Good, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed.

Given under my hand at the city of Washington, this seventeenth day

of August, in the year of our Lord one thousand eight hundred and forty-three, and of the Independence of the United States of America the sixty-eighth.

[L. S.]

A. P. UPSHUR,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

HENRY L. ELLSWORTH,
Commissioner of Patents.

918 The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern:

Be it known that I, John Good, of Philadelphia, in the State of Pennsylvania, have invented a new design of an apparatus, which I denominate a corpse-preserver; which apparatus, although there is not anything new in the principle of its action, is new in its shape and configuration, and neat in its appearance. Its intention is to preserve the bodies of the dead in warm weather, during the period which elapses between the time of decease and interment.

It is the usual practice, when the preservation is to be effected by ice, to pile it upon and make it surround the corpse, a plan which is not only very troublesome and uncleanly, but is calculated to lacerate the feelings of surviving friends, at a time when everything should be sought that is soothing.

In the accompanying drawing, Fig. 1 represents the apparatus complete, which I have designed for the purpose. A A is an outer case, made somewhat in the form of a coffin, and B B′ a close-fitting lid, which is furnished with a glazed opening at B′, through which the face of the deceased may be seen. Fig. 2 is a top view of the case A A, the lid B being removed; the case is made double, there being a partition, C C, which reaches from the bottom of A A to within four or five inches, more or less, of its top, leaving a space, D D, of several inches between the two, which is to be filled with ice. E E, Fig. 3, represents a false bottom, which is shown as perforated with numerous holes; this, however, is not absolutely necessary. This false bottom fits within the partition C C, and rests upon ledges, which keep it some four or five inches above the bottom of the case A, leaving a space which is also a receptable for ice. The corpse is to be deposited on this false bottom. E′ E′ is an edge view of it. F F′ a tray, which is shown edgewise at F″ F″, in a vertical section along its middle; this tray drops into the case A A, below its lid B B′; it is glazed at F′, in an opening corresponding with that of B′ in the lid. The part F′ is furnished with a flanch, as
919 shown at G G, to retain the ice. The tray is four or five inches deep, and is to be filled with ice.

Fig. 5 is a longitudinal vertical section through the apparatus, the false bottom and tray being within the case A A. In this figure the respective parts are marked with the same letters of reference as in the others. H H are openings through the lower part of the partition C C, to allow the water from the melting ice to pass into the space below the false bottom, in order that the whole may be carried off by the waste-pipe *a a*; that from the tray escapes through the pipe *b b*.

This apparatus may be best made of tin-plate, but it may be formed of other metal, of wood, or of any other suitable material.

Having thus fully described the manner in which I form my appara-

tus, and having in the accompanying drawing shown the design thereof, I hereby claim as new, and desire to secure by letters-patent, a corpse-preserver, the shape and configuration of which is substantially such as I have herein made known and represented in the drawings thereof.

JOHN GOOD.

Witnesses:
ELIJAH JONES.
R. BERRIMAN.

The United States Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file-wrapper and contents in the matter of the letters-patent granted Enoch Piper, March 19th, 1861, No. 732.

In testimony whereof I, John L. Hayes, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed, this thirtieth day of July, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States the eighty-seventh.

[L. S.]

JOHN L. HAYES,
Acting Commissioner.

920 *Petition.*

To the Commissioner of Patents:

The petition of Enoch Piper, of Camden, in the county of Waldo, and State of Maine, respectfully represents:

That your petitioner has invented a new and improved method of preserving fish and meats, which he verily believes has not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters-patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid thirty dollars into the Treasury, and complied with the other provisions of the said act.

ENOCH PIPER.

Specification.

To all whom it may concern:

Be it known that I, Enoch Piper, of Camden, in the county of Waldo, and State of Maine, have invented a new and improved method of preserving fish and meats; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawing forming a part of this specification.

The nature of my invention consists:

1. In bringing artificial congelation to a practical purpose in the art of preserving fish and meats unchanged and fresh, for any desirable length of time, by the continued application of a frigorific mixture to a suitable vessel containing them.

2. In addition to the above treatment, and in combination with it, in coating the frozen fish or meats, with ice, cloth, India rubber, gutta-percha, tin-foil, or any suitable substance that will effectually exclude the air, and thus prevent the juices from escaping so that the fish or meats shall neither dry nor shrivel up; and

3. In providing the preserving-chamber, substantially as herein-

921 after described, with tubes for holding the frigorific mixture which is to perpetuate and control the requisite degree of temperature in said chamber.

The most important application which I propose to make of my invention is for preserving salmon, which are only taken in large quantities in high northern latitudes in summer, so remote from our large cities that they can be made available in a fresh state only by artificial congelation, by which means they can be put into the markets at the time when they will command the highest prices.

Hitherto the only method in use for preserving this kind of fish in a fresh state has been to pack them with crushed ice, in barrels or boxes. This method, however, owing to the melting of the ice and the consequent moistening of the fish, fails to preserve them fresh and good for more than a month at most; whereas by my new method and treatment they can be kept as fresh and sweet as when first caught, and for any desirable length of time, even for years.

I do not profess to have invented the means of producing artificial congelation, nor to have discovered the fact that no decay takes place in animal substances so long as they are kept a few degrees below the freezing-point of water; but the practical application of these to the art of preserving fish and meats as above described is a new and a very valuable improvement, a great desideratum which has long been sought but never before attained.

The apparatus for freezing the fish and keeping them in a frozen state may be constructed in various ways, and of different shapes; the apparatus shown in the drawing, however, will suffice to illustrate the principle and mode of operation.

A is a box of wood or other suitable material in which the fish are laid in small quantities on the rack, R, for the purpose of freezing, the bottom of the box being previously covered with a frigorific mixture, such as salt and ice.

1, 2, 3, 4 are metallic pans, which, being filled with a similar mixture, are then set over the fish, and the cover, A′, is shut upon them. The temperature in the box soon falls to 10° or 15° below the freezing-point of water, and in about twenty-four hours (the mixture being 922 changed once in twelve hours) the fish will be frozen completely through.

The freezing-chamber, A, need not, of necessity, be attached to the larger box, B. It should also be provided with a non-conducting packing in the same manner as the box C.

After the fish are thoroughly frozen I pack them closely together in the larger or preserving-box, C, which is enclosed in a still larger box, B, the space between the two boxes being filled with saw-dust, charcoal, or other poor conductor of heat.

Passing through this inner box are metallic tubes, D, which are open at the upper ends; the lower extremities being provided with flanges which are screwed to the bottom of the box. From the bottom of each tube, D, is a small pipe, F, extending to the outside of the outer box; the object of said pipes being to draw off the pickle in the tubes, D, as often as required. When not used for this purpose the pipes are stopped by any suitable means at their outer ends.

a a are slats or covers which may be removed at pleasure for the purpose of putting in, or taking out, the fish.

B′ is the cover of the outer box and is provided with holes, D′, through which, when the cover is shut down, the tubes D may project, so that they may be charged with the frigorific mixture without opening the box.

By keeping the tubes D filled with the mixture of salt and ice, the temperature of the preserving-chamber can be maintained for any length of time below the freezing-point, and fish surrounded by this dry and freezing atmosphere will be preserved as fresh and good as when first caught, and many times longer than by any other method known or used before.

E E, E′ E′ are small holes for introducing a thermometer to ascertain the temperature in the chamber.

At the last stage of the freezing process in the chamber C, I cover the fish or meat with a coating of ice, which can be done by immersing them a few times in ice-cold water, or by applying the water with a brush or swab several times, forming a coat of about one-eighth of an inch in thickness.

923 To prevent the ice from cracking off, I then apply to the fish or meats (when they are to be kept an unusual length of time) a cover of cloth, and in the same manner cover the cloth with another coating of ice; or, they may be coated with India rubber, gutta-percha, tin-foil, or any suitable substance (either in combination or separately) that will effectually exclude the air, and prevent the juices from escaping by evaporation, thereby preserving the same plump and fresh appearance as when first frozen.

Claims.

What I claim as my invention and desire to secure by letters-patent is,

1. The bringing of artificial congelation to a practical purpose in the art of preserving fish and meats fresh and unchanged for any length of time, by the continued application of a frigorific mixture brought to act upon them in a chamber, substantially as described.

2. In addition to the above treatment, and in combination with it, I claim the coating of the fish or meats, with ice, cloth, India rubber, gutta-percha, tin-foil, or any equivalent substance that will effectually exclude the air, and prevent the juices from escaping, as specified.

3. The preserving-chamber C, provided with tubes, or any device substantially the same, for maintaining and controlling the requisite degree of temperature, as described.

ENOCH PIPER.

Witnesses:
N. AMES.
GEO. H. SMITH.

Oath.

COMMONWEALTH OF MASSACHUSETTS, *County of Suffolk, ss:*

On this thirteenth day of January, 1859, before me, the subscriber, a justice of the peace in and for said county, personally appeared
924 the within-named Enoch Piper, and made solemn oath that he verily believes himself to be the original and first inventor of the within-described method of preserving fish and meats, and that he does not know or believe that the same was ever before known or used, and that he is a citizen of the United States.

GEO. H. SMITH.

(Endorsed on this paper:) Filed Jan'y 17, '59. J. F. G. Cancelled, except petition, oath, and signature, by amended sp'n filed Feb. 11, '61. H. W.

BOSTON, MASS., *January* 13, 1858.

Hon. JOS. HOLT, *Commissioner of Patents:*

SIR: Enclosed are ten dollars, which, added to the fee for the caveat which I filed less than a year ago, will complete the fee for the application for a patent, herewith enclosed. Please, therefore, apply the caveat-fee to this purpose, and oblige yours, respectfully,

ENOCH PIPER.

(Endorsed on this paper:) Filed Jan. 17, '59. J. F. G.

Power of attorney.

Know all men by these presents, that I, Enoch Piper, of Camden, in the county of Waldo and State of Maine, do hereby authorize and appoint Nathan Ames, of Saugus Centre, in the county of Essex, and commonwealth of Massachusetts, my true and lawful attorney, for me and in my name to conduct, with the Commissioner of Patents, any
925 correspondence which may arise on my application for a patent for improved method of preserving fish and meats, hereby ratifying and confirming whatsoever my said attorney may lawfully do, or cause to be done, in the premises.

In testimony whereof I hereunto set my hand and seal this thirteenth day of January, 1859.

[L. S.] ENOCH PIPER.

Sealed and delivered in presence of Geo. H. Smith.

(Endorsed on above:) Filed Jan. 17, '59. J. F. G.

BOSTON, *January* 22, 1859.

Hon. JOSEPH HOLT, *Commissioner of Patents:*

SIR: I hereby amend the specification of my application for patent for method of preserving fish and meats, by inserting the following just before the claims, namely:

In the case of meats, it is not necessary to resort to the coating process, especially beef and pork preserved for salt-packing in warm weather, which can be done by this treatment with no more loss than in the best winter weather, while the cold pickle or brine of the dissolving salt and ice is ready-made, and may be drawn off as required, to pickle the barrels after packing the meats, etc.

ENOCH PIPER.

(Endorsed on above:) Rec'd and filed Jan. 26, '59. H. W. (Amendment.) Cancelled.

926 SAUGUS CENTRE, MASS., *January* 24, 1859.

Hon. JOSEPH HOLT, *Commissioner of Patents:*

SIR: I have received from Mr. Piper the enclosed amendment of the specifications of his "method of preserving fish and meats," and, if it be not too late, I request that it may be incorporated in the specifications now in your office.

Yours, respectfully,

NATHAN AMES,
Attorney for Enoch Piper.

(Endorsed on above:) Rec'd and filed Jan. 26, '59.

UNITED STATES PATENT-OFFICE, *Feb.* 10, 1859.

SIR: In the case of your application for letters-patent for the preservation of fish, etc., it is necessary to return your papers for amendment. Your claims include two subjects, either of which would form the proper subject of an application, namely, methods and apparatus.

You can choose which of these you will make the subject of your present application, and amend by removing the claims relating to the other. At the same time, the office takes the opportunity to remark that it is unable to discern novelty in the methods used by you. A copy of the rules of the office and a form for amendments is enclosed with your papers.

Respectfully, yours, etc.,

J. HOLT, *Com.*

ENOCH PIPER, NATHAN AMES,
Saugus Centre, Mass.

927 SAUGUS CENTER, ESSEX CO., MASS., *February* 19, 1859.

HON. JOSEPH HOLT, *Commissioner of Patents:*

SIR: I have received yours of Feb. 10, 1859, in regard to Enoch Piper's application for patent for preservation of fish, etc., and have concluded to confine his present application to the methods, as embraced in the 1st and 2d claims. I therefore do hereby amend his specifications by striking out the third claim on page 7.

Also, by erasing from the word "congelation," in the first line of page 3, to the end of the fourth line of the same page.

Also, by erasing from the word "improvement," in the twenty-sixth line of page 3, to the end of the twenty-eighth line on the same page.

Also, by striking out from the word "up," in the seventeenth line of page 2, to the end of the twenty-third line of the same page.

Yours, respectfully,

NATHAN AMES,
Attorney for Enoch Piper.

(Endorsed on above:) Rec'd and filed Feb. 23, '59. H. W. (Amendment.) Cancelled.

Revision, No. 1247.

UNITED STATES PATENT-OFFICE,
Washington, March 6, 1861.

SIR: Having examined the application of E. Piper for improvement in the method of preserving fish, etc., we approve the action of the examiner having charge of the case, and recommend that a patent be allowed accordingly.

Respectfully submitted.

W'M B. TAYLOR,
T. R. PEALE,
Revising Examiners.

Hon. S. T. SHUGERT, *Act'g Commissioner of Patents.*

928 UNITED STATES PATENT-OFFICE,
March 6, 1861.

The above report is approved and a patent allowed.

S. T. SHUGERT,
Act'g Commissioner.

(Endorsed on above:) No. 1247. Enoch Piper, preserving fish and meat. Allowed.

NEW YORK, *April* 5, 1860.

To the COMMISSIONER OF PATENTS:

SIR: Please send us the specification and drawing of Enoch Piper, improvement in preserving fish, etc.

Enclosed you will find power of attorney.

Respectfully,

MUNN & CO., *Attorneys.*

(Endorsed on above:) Piper to office. Filed April 6, '60. T. C. C. (Note.) Sp'n and Dr. requested.

SAUGUS CENTRE, MASS., *April* 14, 1859.

To the COMMISSIONER OF PATENTS:

SIR: It is now a very long time since I made application for Enoch Piper, of Camden, Maine, for "method of preserving fish and meats," and he is beginning to feel impatient to hear from the office.

Thinking it possible that you may have written and the letter miscarried, I now write to request that you would inform me how the matter is, and thereby oblige,

Your respectfully,

NATHAN AMES,
Attorney for E. Piper.

(Endorsed on above:) Piper to office. Rec. and filed April 19, '59. T. C. C. No answer required.

929 ROCKPORT, MAINE, 20*th June*, 1859.

To the COMMISSIONER OF PATENTS, *Washington, D. C.:*

SIR: I hereby appoint Messrs. Munn & Co., of the cities of New York and Washington, my accredited agents, to withdraw the specification and drawings of my application for letters-patent for preserving fish and meats by artificial congelation, and to make such amendments, and to the same extent transact such other business with the Department, pertaining to this application, as is vested in Nathan Ames, whose power of attorney is hereby revoked.

[SEAL.] ENOCH PIPER.

(Endorsed on above:) Power of att'y from Enoch Piper to Munn & Co. Rec'd and filed April 6, '60. F. S.

Petition.

To the COMMISSIONER OF PATENTS:

The petition of Enoch Piper, of Camden, in the county of Waldo and State of Maine, respectfully represents:

That your petitioner has invented a new and useful method of preserving fish and meats, which he verily believes has not been known or used prior to the invention thereof by your petitioner. He, therefore, prays that letters-patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to do the same, upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid thirty

dollars into the Treasury, and otherwise complied with the require-
930 ments of said act. And he hereby authorizes O. D. Munn, S. H. Wales, and A. E. Beach, of the firm of Munn & Co., or their accredited agents, to act as his attorneys in presenting the application, and in making all such alterations and amendments as may be required, and to receive the letters-patent when granted.

ENOCH PIPER.

Oath.

COUNTY OF WASHINGTON,
District of Columbia, ss:

On this twenty-fourth day of January, 1861, before the subscriber, a notary public in and for said county, personally appeared the within-named Enoch Piper, and made solemn oath that he verily believes himself to be the original and first inventor of the within-described method of preserving fish and meats, and that he does not know or believe that the same was ever before known or used; and that he is a citizen of the United States.

[SEAL.]

EDM. F. BROWN,
Notary Public.

The specification of Enoch Piper's improvement in preserving fish and meats is hereby amended as follows:

1. Erase from the fourth to the seventeenth line, inclusive, of page two, and insert:

"In a method of preserving fish and other articles by placing them within a chamber, and cooling the latter by means of a freezing-mixture, so applied that no communication shall exist between the interior of the preserving-chamber and that of the vessels in which the freezing-mixture is placed."

2. Erase the last four lines of page six, and the first eight lines of page seven, and insert:

931 "Preserving fish or other articles in a close chamber by means of a freezing-mixture, applied in vessels having no communication with the air within the interior of the preserving-chamber, substantially as set forth."

ENOCH PIPER,
Per MUNN & CO., *Attorneys.*

(Endorsed on above:) Rec'd and filed Jan'y 28, '61, H. W. (Amendments.) Cancelled. Washington, January 26, 1861.

JANUARY 23D, 1861.

We, the undersigned, do hereby certify that we have sold fish preserved according to the process as set forth in the invention of Mr. Enoch Piper, for three years. It has been proved by experience that fish can be kept in a perfectly solidified state, for any period, by maintaining the low degree of temperature required to completely freeze the article in the first instance, which object is completely attained through this invention. We have found that the article is preserved in its original quality, and equal in flavor to entirely fresh and newly caught fish. The advantages arising from the use of this invention consist in preserving for future sale in a perfect condition, those varieties of fish which visit our coasts periodically, remaining but a short time; thereby creating a business of itself, enabling fish-dealers to furnish articles to their customers during the entire year, which heretofore they have only

been able to do for a short period of each. By this invention we are enabled to do away with the popular idea that certain varieties of fish are only in "season" at particular periods of the year; as, by the ordinary method of preserving, fish could be kept but for a very short time. The value of this invention cannot be estimated, as there is no limit to its usefulness for the accommodation of the public.

W. M. ROGERS & CO.,
Fish-dealers, Fulton Market, N. Y. City.

932 In addition to the foregoing, we would state that we have such confidence in the practicability of this method of Mr. E. Piper, we have made arrangements with him for salmon and other fish preserved by him, for the ensuing season to the amount of about fifteen thousand dollars, which we consider will be an actual increase in our business to that amount, and with a good prospect of its being annually increased.

W. M. ROGERS & CO.

(Endorsed on above.) Rec'd and filed Jan. 28, '61. H. W. Argument.

The amended specification of Enoch Piper's method of preserving fish and other articles is hereby further amended by erasing all but the signatures, and rewriting as follows:

To all whom it may concern:

Be it known that I, Enoch Piper, of Camden, in the county of Waldo, and State of Maine, have invented a new and improved "method of preserving fish and meats;" and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings forming a part of this specification.

The nature of my invention consists: "In a method of preserving fish and other articles by placing them within a chamber and cooling the latter by means of a freezing-mixture so applied that no communication shall exist between the interior of the preserving-chamber and that of the vessels in which the freezing-mixture is placed."

The most important application which I propose to make of my invention is for preserving salmon, which are only taken in large quantities in high northern latitudes in summer, so remote from our large cities that they can be made available in a fresh state only by artificial congelation.

933 Hitherto the only method in use for preserving this kind of fish in a fresh state has been to pack them with crushed ice in barrels or boxes. This method, however, owing to the melting of the ice and the consequent moistening of the fish, fails to preserve them fresh and good for more than a month at most; whereas by my new method and treatment they can be kept as fresh and sweet as when first caught, and for any desirable length of time, even for years.

I do not profess to have invented the means of producing artificial congelation, nor to have discovered the fact that no decay takes place in animal substances so long as they are kept a few degrees below the freezing-point of water; but the practical application of these to the art of preserving fish and meats, as above described, is a new and a very valuable improvement.

The apparatus for freezing the fish and keeping them in a frozen state may be constructed in various ways and of different shapes; the appa-

ratus shown in the drawing, however, will suffice to illustrate the principle and mode of operation.

A is a box of wood, or other suitable material, in which the fish are laid in small quantities on a rack, R. The said box is surrounded by a packing of charcoal or other suitable non-conducting material.

1, 2, 3, 4 are metallic pans, which, being filled with a freezing-mixture, such as salt and ice, are then set over the fish, and the cover A′ is shut upon them. The temperature in the box soons falls to 10° or 15° below the freezing-point of water, and in about 24 hours (the mixture being changed once in 12 hours) the fish will be frozen completely through.

After being thus frozen, the fish or meats may, if desired, be covered with a coating of ice by immersing them a few times in ice-cold water, or by applying the water with a brush or swab several times, forming a coat of about one-eighth of an inch in thickness. To prevent the ice from cracking off, I then apply to the fish (when they are to be kept an unusual length of time) a cover of cloth, and in the same manner cover the cloth with another coating of ice; or they may be coated with gum-arabic, India rubber, gutta-percha, tin-foil, or any suitable substance
934 (either in combination or separately) that will effectually exclude the air and prevent the juices from escaping by evaporation, thereby preserving the same plump and fresh appearance as when first frozen.

The fish are then packed closely together in a large preserving-box, C, which is enclosed in a still larger box, B, the space between the two boxes being filled with charcoal or other non-conducting material to exclude heat.

Passing through the inner box are metallic tubes, D, which are open at the upper ends for the introduction of a freezing-mixture, the lower extremities being formed with flanges, which are screwed to the bottom of the box. A small pipe, F, leads from the bottom of each tube D to the outside of the outer box, the object of said pipes being to draw off the brine from the tubes D as often as required. When not used for this purpose, the pipes are stopped by any suitable means at their outer ends.

a a are slats or covers, which may be removed at pleasure, for the purpose of putting in or taking out the fish.

B′ is the cover of the outer box, and is provided with holes, D′, through which, when the cover is shut down, the tubes D may project so that they may be charged with the freezing-mixture without opening the box.

The combined area of the tubes D may be about one-fifth that of the chamber C. By keeping the said tubes filled with the mixture of salt and ice, the temperature of the preserving-chamber can be maintained for any length of time below the freezing-point; and fish surrounded by this dry and freezing atmosphere will be preserved as fresh and good as when first caught, and for a much longer period than by any other method known to me.

E E E′ E′, are small holes for introducing a thermometer to ascertain the temperature in the chamber.

I do not desire to be understood as confining myself to the use of the specific apparatus above described, nor to the use of either or both the preliminary processes of freezing and coating; but I have described the mode of operation which, by experience, I have found best for preserving the most delicate varieties of fish.

935 In the case of meats, it is not necessary to resort to the coating process, especially beef and pork preserved for salt packing

in warm weather, which can be done by this treatment with no more loss than in the best winter weather; while the cold pickle, or brine, of the dissolving salt and ice is ready made, and may be drawn off as required, to pickle the barrels after packing the meat, etc.

Having thus described my invention, what I claim therein as new, and desire to secure by letters-patent, is:

Preserving fish or other articles in a close chamber, by means of a freezing-mixture, having no contact with the atmosphere of the preserving-chamber, substantially as set forth.

ENOCH PIPER,
Per MUNN & CO., *Attorneys.*

WASHINGTON, *February* 8, 1861.

(Endorsed on above:) Rec'd and filed Feb'y 11, '61.
Amended specification.
Ex'd on this.
H. W.

4736. No. 732.
No. 1247. Whole No. 31,736.
Enoch Piper, of Camden, county of , State of Maine.
Preserving fish and meat.

Rec'd Jan'y 17, 1859.
Petition " "
Affidavit " "
Specification " "
2 drawing' " "
Model " "
Caveat, July 26, '58.
104
936
1. Cash, $10. Jan'y 17, '59.
Examined. Thomas Antisell. Feb'y 28, 1861.
2. Issue. Shugert, March 7, 1861.
3. Patented March 19, 1861.
Recorded vol. 127, page 82.
P. Munn & Co., N. Y.

Preserve cans, chemical.
1. Sp. ret. to am. Feb. 10, '59.
2, 3. Rej. 1. April 13, '59.
4, 5, 6. Sp'n & dr. to app. April 7, '60.
7. Sp'n ret. to amend, } Jan'y 29, 1861.
8, & their drawings. } Knight.

(Indorsed on above:) "Imp't in method of preserving fish." Revised and approved, March 6, '61.

The United States Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this Office.

In testimony whereof I, T. C. Theaker, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States the ninety-first.

[SEAL.] T. C. THEAKER.

UNITED STATES PATENT-OFFICE,
April 13, 1859.

SIR: Your application for letters-patent, as amended, for a method of preserving articles of food, has been examined, and the Office does
937 not recognize any novelty in your method. The use of artificial congelation for these purposes is old. H. Benjamin and O. H. Grafton patented in England, January 27, 1842, the use of ice and salt, and other freezing-mixtures, inclosed in a metallic vessel with the article to be preserved, stating that it is "particularly applicable to preserving fish," as you do also. (See English specifications for 1842, No. 9,240.) The coating of the article with various substances for like purposes, which you claim also, is very common. (See English patents, granted to Francis Plouden, June 13, 1807, English specifications for 1807, No. 3,051; to Robert Warrington, March 5, 1846, ibid. for 1846, No. 11,120; to Ebenezer Hartnall, February 5, 1855, ibid. for 1855, No. 269; to Benet & Donein, December 11, 1855, ibid. for 1855, No. 2,800; and to Charles Hypolyte Vion, January 15, 1853, ibid. for 1853, No. 106,) the last of whom, like yourself, envelops the article in ice.

In view of these references, it is necessary to reject your claims.

Respectfully, yours, etc.

S. T. SHUGERT,
Act'g Commissioner.

ENOCH PIPER, ESQ.,
Care Nathan Ames, Saugus Centre, Mass.

A. D. 1842. No. 9,240.

Specification of Henry Benjamin and Henry Grafton—preserving animal and vegetable matters.

To all to whom these presents shall come: We, Henry Benjamin, of St. Mary at Hill, in the city of London, fish factor, and Henry Grafton, of Chancery Lane, in the county of Middlesex, philosophical instrument maker and machinist, send greeting.

Whereas her present most Excellent Majesty Queen Victoria, by her letters-patent under the great seal of Great Britain, bearing date at Westminster, the twenty-seventh day of January, in the fifth year of her reign, did, for herself, her heirs and successors, give and grant
938 unto us, the said Henry Benjamin and Henry Grafton, her especial license, full power, sole privilege, and authority, that we, the said Henry Benjamin and Henry Grafton, our executors, administrators, and assigns, or such others as we, the said Henry Benjamin and Henry Grafton, our executors, administrators, or assigns, should at any time agree with, and no others, from time to time, and at all times during the term of years therein expressed, should and lawfully might make, use, exercise, and vend within England, Wales, and the town of Berwick-upon-Tweed, our invention of "improvements in preserving animal and vegetable matters;" in which said letters-patent is contained a proviso that we, the said Henry Benjamin and Henry Grafton, or one of us, shall cause a particular description of the nature of our said invention, and in what manner the same is to be performed, to be enrolled in her said Majesty's high court of chancery within six calendar months next and immediately after the date of the said in part recited letters-patent, as in and by the same, reference being thereunto had, will more fully and at large appear:

Now know ye that, in compliance with the said proviso, we, the said Henry Benjamin and Henry Grafton, do hereby declare that the nature of our said invention, and the manner in which the same is to be performed, are fully described and ascertained in and by the following statement thereof, (that is to say:)

Our invention relates to preserving of animal and vegetable matters by freezing or cooling them by the aid of freezing-mixtures; and in order that our invention may be fully understood and readily carried into effect, we will describe the means pursued by us; and as our invention is particularly applicable to preserving fish, we will first describe the means we pursue for preserving fish according to our invention. The fish intended to undergo the process is subjected to a freezing-mixture composed of ice pulverized and mixed with common salt; and we use for such mixture about one part of salt and six parts of ice; and when such fish has undergone the process, and has become completely frozen, it will remain preserved. We place the fish intended to be frozen in a copper or other metallic vessel, and fill up with cold water, and the vessel con-
939 taining the fish and water is deposited in a mixture of pulverized ice and salt, as before mentioned, the said mixture being in a wooden trough. The fish, thus prepared, may be kept in a pure state for a considerable length of time, by the application of the freezing-mixture, in order to keep the same frozen. In those cases where the fish is only required to be kept preserved for a short time, I employ freezing-mixtures to cool the air of a close room, made of brick or other suitable material, sufficiently excluding the heat of the sun; and the fish to be preserved being placed in such room or chamber, in baskets or on slabs, we cause the air to circulate against the surfaces of metal vessels containing freezing-mixtures, by means of revolving fans or other suitable means within the room or chamber, the object being to keep the air of the room in constant movement, by which it will be found that the moisture taken up by the air will, from time to time, become frozen on the surfaces of the metal vessels containing the freezing-mixture; and the same must be brushed off continually, in order to keep the surfaces clean, as the frost on the vessels would otherwise retard the effect of cooling the circulating air. By this arrangement the fish will be kept cool, and preserved; and if it has been previously frozen, as before described, the keeping it in a room or chamber, as here described, would retain it in a frozen state. In preserving meat or vegetables, we treat those matters in the same manner as described for fish; and it only remains to be stated that, although we have only described ice and salt in particular quantities, we do not confine ourselves thereto, as salt may be used in larger or smaller quantities, in respect to the ice, the larger quantities of salt increasing the degree of cooling effect. And we would state that, although we prefer ice and salt as the freezing means, we do not confine ourselves thereto, as other well-known freezing-mixtures may be resorted to; at the same time we would have it understood that we make no claim to such freezing-mixtures, when separately considered, but only their use and application for freezing or cooling animal and vegetable matters to preserve them. And we would state, that we are aware that ice alone has been used for cooling animal matters to preserve them; but, when alone, ice is of comparatively little use;
940 we do not therefore claim the use of ice when uncombined with other material or materials for obtaining a freezing-mixture.

In witness whereof I, the said Henry Grafton, have hereunto set my hand and seal this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and forty-two.

[L. S.] HENRY GRAFTON.

And be it remembered, that on the twenty-seventh day of July, in the year of our Lord 1842, the aforesaid Henry Grafton came before our said lady the Queen in her chancery, and acknowledged the specification aforesaid, and all and everything therein contained and specified, in form above written. And also the specification aforesaid was stamped according to the tenor of the statute made for that purpose.

Inrolled the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and forty-two.

The United States Patent-Office. To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this Office of the letters-patent granted John Good, dated December 12, 1854, No. 12,058.

In testimony whereof I, Elisha Foote, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this fourth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-third.

ELISHA FOOTE.

No. 12,058.

The United States of America. To all to whom these letters-patent shall come:

Whereas, John Good, of Philadelphia, Pa., has alleged that he
941 has invented a new and useful improvement in coffins, which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said John Good, his heirs, administrators, or assigns, for the term of fourteen years from the twelfth day of December, one thousand eight hundred and fifty-four, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Good, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twelfth day of December, in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the United States of America the seventy-ninth.

ROBERT McCLELLAND,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.
[L. S.]

C. MASON,
Commissioner of Patents.

The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern:

Be it known that I, John Good, of the city of Philadelphia, in the county of Philadelphia, and the State of Pennsylvania, have in-
942 vented a new and useful improvement on the "corpse-preserver," for the preservation of dead bodies in warm weather until burial, said improvements consisting in certain additions to the apparatus now in use, which tend to more effectually exclude the air from the corpse; and I do hereby declare that the following is a full and exact description of the same, reference being had to the accompanying drawings, making a part of this specification, in which Figure 1 is a perspective view; Figure 2, a longitudinal vertical section of the apparatus complete; Figure 3, a transverse vertical section on the line *a b*: Figure 4, a top plan of the case or box, the lid and tray being removed; Figure 5, a top plan of the tray; Figure 6, a bottom plan, and Figure 7, a perspective view of the same; Figure 8, a transverse vertical section of the tray on the line *c d*. Like letters refer to like parts. Letter A, the box or case; B, the lid; C, ice-tray; D, false bottom resting upon the ice, upon which is placed the corpse; E, glazed opening in the lid; F, glazed opening in the tray, immediately under and corresponding with that in the lid; G, a reservoir, in shape like the frustrum of a cone inverted, and open at the top; H, a pipe carried above the bottom of the reservoir G, and extending downwards to within a short distance of the bottom of the box or case; I, a pipe leading from the tray C to the reservoir G, the extremity of said pipe being carried a little to one side and below the top of the pipe H; K, a pipe in the bottom of the box, of sufficient size to carry off the water from the melting ice in both tray and box; L, a reservoir under the box, into which the pipe K discharges. Said pipe, being carried below the aperture of the reservoir L, is, whilst in use, immersed in the water, the object of this arrangement, and also that of the pipe I, being to exclude the air from the corpse, and thereby tend to its better preservation. The tray C is made with a collar, *n*, the use of said collar being to render the preserver air-tight when the lid is removed for the purpose of replenishing the ice in the tray, the collar being made to fit over that part of the box marked *m*, and resting in a gutter which is carried round the box, as shown in the drawing, Figure 4, the gutter being partly filled with water. The space below the false bottom D, in Figure 2, is
943 represented with ice in it. The top B, covering the whole, forms, with my improvements, a perfectly air-tight "corpse-preserver."

The corpse-preserver being made with double walls, and in all other respects being precisely similar to those in use, I do not deem it necessary to give a full description of the same, further than to state that the hole marked "H" is rendered water-tight by the insertion of a plug.

The operation of my improvements is as follows: The lower portion of the case is filled with a sufficiency of ice, upon which the false bottom D rests. Upon this bottom the corpse is placed The tray is then put in its place, as shown in Figure 2, with ice in it, the lid B being then placed over all. As the ice in the tray melts, the water is carried off by means of the tube I into the reservoir G, from which it escapes by means of the pipe H. The lower end of the pipe I, being below the upper end of the pipe H, is consequently immersed in the water. The water from the tray and box passes into the reservoir L by means of the pipe K, the water escaping from the reservoir by means of the aperture, as shown in Figure 1, into any suitable vessel placed under to receive it, the pipes

I and K having their lower ends immersed in the water, from what may aptly be termed a water-lock, thus preventing the entrance of the air either from above or below, and thereby tending to the better preservation of the corpse.

CLAIM.—I am aware that water valves and joints are in common use, and therefore do not claim these devices separately; but what I do claim, and desire to secure by letters-patent of the United States, is, the collar *n*, the reservoir G and L, in connection with the pipes H, I, and K, the various parts being arranged and connected as set forth in the specifications and accompanying drawings, and acting in manner and for the purpose herein specified.

JOHN GOOD.

Witnesses:
JNO. B. KENNEY,
R. PHILLIPS.

944 The United States Patent-Office. To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters-patent granted C. F. Pike, June 12th, 1866, No. 55,532.

In testimony whereof I, T. C. Theaker, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this eighteenth day of October, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States the ninety-first.

[SEAL.] T. C. THEAKER.

No. 55,532.

The United States of America. To all to whom these letters-patent shall come:

Whereas Charles F. Pike, of Providence, Rhode Island, has alleged that he has invented a new and useful improved refrigerator for cooling oil, etc., which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said invention, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said invention, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Charles F. Pike, his heirs, administrators, or assigns, for the term of seventeen years,
945 from the twelfth day of June, one thousand eight hundred and sixty-six, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, a description whereof is given in the words of the said Charles F. Pike, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twelfth day

of June, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States of America the ninetieth.

[L. S.]

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

T. C. THEAKER,
Commissioner of Patents.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Charles F. Pike, of the city and county of Providence, in the State of Rhode Island, have invented a new and improved mode of refrigeration for the cooling of oil and other substances, and for the curing and preserving of fish, meats, provisions, and other articles; and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon.

The nature of my invention consists in having an ice receptacle or box at the top of the structure, connected by open tubes or pipes, passing down from the bottom thereof into and through the provision-chamber, or refrigerating-room, and opening into a water-tank at the bottom of the structure, filling the ice-box and pipe with ice (or
946 with ice and salt, or other known refrigerating-material,) and then taking the cold water from the water-tank by means of a pump and throwing it up into the ice-receptacle, to pass over and through the ice in the ice-box and tubing or pipes to the water-tank again, thus obtaining the benefit of the cooling properties of the ice and ice-water by conduction, for the purpose of refrigeration.

To enable others skilled in the art to make and use my invention, I will proceed to describe its construction and operation. I construct an ice box or receptacle, represented in the accompanying drawing by the letter A, of any desired form and size. In the bottom of this ice-box are holes or openings for tubes or pipes, represented in the accompanying drawing by the letters B B B B, which have their upper ends inserted in these holes or openings in the ice-box and extend thence down through the provision-chamber or refrigerating-room into the water-tank or receptacle C, and opening into the same, the lower ends of these tubes or pipes resting on the top of the water-tank or receptacle. I then construct a water-tank or receptacle, C, represented in the accompanying drawing by the letter C. Inside the water-tank, and between the upper and lower floors thereof, I construct arches for the support of the top floor of the water-tank and tubes or pipes and to sustain the weight of whatever may be placed in or over the provision-chamber or refrigerating-room. These arches are represented in the accompanying drawing by the letters D D D D D D D D D D D D, and are so constructed that, while they support the superincumbent weight, they allow a free flow of water through the entire water-tank. In the stead and place of these any other known mode of support may be used. A pipe, E, or cock of any known structure, is inserted in the water-tank, by means of which the water in the tank can, whenever desired, be drawn off. A discharge or overflow pipe, F, is inserted into the ice-box or receptacle A, near the top thereof, to prevent any over-

flow of water arising from obstructions or otherwise. A pump of any known form or structure, represented in the accompanying drawing by the letters G, is placed in the ice box or receptacle, and with the pipe thereof passing down through the provision-chamber or refriger-
947 ating-room into the water-tank for the purpose of pumping the cold water in the water-tank up into the ice box or receptacle. In the accompanying drawing the pump is placed in the ice-box, but its position may be inside or outside the ice-box, as may be required.

The ice-box or receptacle, the water tank or receptacle, and the tubes or pipes connecting the two are made of copper, galvanized iron, or any other metal. The thinner they are consistent with the requisite strength, the better.

The ice is placed in the ice-box A, and fills the tubes or pipes B B B B, etc., and as it melts the water passes into the water-tank C, and is thence taken by the pump and thrown into the ice-box, to pass again through and over the ice into the water-tank, and so on, the coldness of all the same being in the meanwhile conducted from the ice-box tubes or pipes and water-tank to the provision-chamber or refrigerating-room. My invention is applicable to domestic refrigerators, markets, packing-houses, cars, and commercial purposes, and when constructed and used upon a large scale, as for markets, packing-houses, and the like, the structure or building will be an enlarged refrigerator. The size and form of the structure, the number of tubes or pipes, in proportion to the size of the provision-chamber or refrigerator-room, and the proportion of the parts may be varied according as space, degree of refrigeration, or other circumstance require. When my invention is applied or used for a domestic or market refrigerator, or for the purpose of freezing or keeping fish, poultry, or other provision, it should be enclosed in, or made with, sides or walls, in the usual modes, using charcoal, sawdust, tan, or any known non-conductor, having the provision-chamber or refrigerating-room fitted with shelves and hooks as may be desired. The nearer the door for access to the provision-chamber or refrigerating-room is to the top, the better, as in this wise there will be less loss of cold air when opened than if placed lower. Having thus fully described my invention, I would state that I do not claim the removable and receiving and distributing pan in combination with a series of tapering tubes or pipes. Nor do I claim the open or ascending drain-pipe as used in either of the patents granted to
948 Enoch Piper, 19th March, 1861, and August 5th, 1862. Nor do I claim the pipes, tubes, ice box or receptacle, or water tank or receptacle, when used separate.

But what I do claim, and desire to secure by letters-patent, is:

First, the construction of parallel open-mouth pipes or tubes fastened to the ice-box or receptacle A and water-tank C, in combination with the ice-box or receptacle A, and also in combination with the water tank or receptacle C, substantially as herein described and for the purposes hereinbefore set forth.

Second, I claim also the application of the pump or pumps, as herein described, for the purposes of keeping up an artificial circulation by raising the water from the water-tank C and throwing it into the ice box or receptacle A, and the using of the water so raised and thrown into the ice box or receptacle A, substantially in the manner and for the purpose hereinbefore stated.

CHARLES F. PIKE.

In presence of—

HENRY MARTIN.

BENJ. WHIPPLE.

United States circuit court, district of Massachusetts.

ENOCH PIPER
vs.
JAS. BROWN ET AL. } In equity.

I hereby certify, that upon comparison of the certified copy of the file-wrapper and contents put in evidence in this case with the copy printed at page 397 of this volume, I find in the said certified copy the following-described marks, notes, and interlineations, made in lead-pencil, namely:

On page 398 the words following and including the word "and," on the second line from the bottom to the bottom of the page, and also the 1st, 2d, and 3d lines of page 399, erased, and the words "erase, Feb. 23, '59," written in the margin.

949 On page 399 the rest of the paragraph after the words "by which means," in the 8th line, erased, and the word "erase" written in the margin; also the rest of the paragraph after the words "a great," in the 22d line, erased, and the word "erase" written in the margin.

In the 27th line of said page, instead of the words "mode of operation," I find in the certified copy these words, "modus operandi in every case," which latter words are erased and the words "mode of operation" substituted therefor.

In the 29th line of said page, the words commencing "for the purpose," to the end of the paragraph, erased.

Before the paragraph at top of page 400 commencing "The freezing-chamber" is a caret, with the words "Insert, see page 6," written in the margin, and the 3d, 4th, and 5th lines of page 400 are erased. The word "sawdust," in the 8th, and the words "poor conductor," in the 9th line, erased, and the words "non-conductor" substituted for the last erased words. Also the words "provided," in the 11th line; "is a small pipe, F, extending," in the 13th line; "pickled," in the 14th line, and "in," in the 15th line, erased, and the words "brine from" substituted for the last two erased words. Also the words "many times," in 28th line, and "or used before," in 29th line, erased. Also the whole of the last paragraph of page 400 erased, the words "which can be done," in the 33d line, being doubly erased.

On the 401 page the first paragraph is erased, and the words "gum-arabic" inserted before the words "India rubber" in the 4th line.

The claims on said page 401 all erased, and the words "erased Feb. 23, '59," written in the margin.

On the 409th page, the word "communication," in the 2d line, erased, and the word "contact" substituted; and the words "interior of," in the third line, erased, and the words "air within" substituted.

Quod attestor.

N. AUSTIN PARKS,
Examiner.

950
951 Circuit court, district of Massachusetts.

ENOCH PIPER
vs.
JAMES BROWN ET AL. } In equity.

JOHN GOOD, being duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows:

I am seventy-one years of age, and reside No. 921 Spruce street, and

my occupation is that of an undertaker. I invented an apparatus for the preservatien of dead bodies, by placing the body in a cold air-chamber and not allowing the ice to come into immediate contact with the body. The apparatus consisted of a metallic box with two walls, between which a non-conducting substance is placed. On top of the box a pan sets in extending down some distance into the inner portion of the box; on the inside was also a metallic perforated plate. I used this apparatus in the following manner: I placed ice in the bottom of the box, put over that the perforated metallic plate, laid the body on the plate, placed the pan over the top of the body, and filled this pan with ice. Over this was the outer cover, so arranged as to make the apparatus substantially air-tight. I make it air-tight by having at the upper outer edge of the box a gutter all around the box. The pan containing the ice placed over the body is so constructed as to overlap and set into the gutter, and the external cover of the box also sets into this gutter. I then fill the gutter with water, and thus effectually exclude the air from coming into contact with the contents of the box. I then procure a continuous drainage for both the ice placed in the bottom of the box and that contained in the pan over the body by using an ascending pipe which, when it permits a continuous flow of water, excludes the introduction of the external air. This apparatus is fully described in the letters-patent granted to me, bearing date August 17, 1843, and December 12, 1854. The patent obtained in 1854 embraces certain improvements which will be found described therein. Ever since I perfected my invention I have had the same in constant use, and under my letters-patent have exercised the right by them conferred upon me. I have granted to other persons licenses and rights under said letters-patents.

952 After taking out my first patent I occasionally used salt commingled with the ice, which I found froze the body contained in the box, and this was more particularly so with children.

I do not think that I have had occasion to use salt, commingled with ice, since I received my patent of 1854.

I exhibit, to the commissioner taking this affidavit, an apparatus constructed under my said letters-patent, which, according to the best of my recollection, was constructed for me shortly after the 'ssuing of my last letters-patent.

JOHN GOOD.

Sworn to and subscribed June 19, '68, before me.

D. P. BROWN, JR.,
United States Commissioner.

The apparatus above referred to as exhibited to the commissioner will be found marked Exhibit A, D. P. B., jr., June 19, '68.

D. P. B., jr.,
U. S. Com.

EASTERN DISTRICT OF PENNSYLVANIA:

I certify that the foregoing affidavit of John Good was taken and reduced to writing by me in the presence of the said John Good, and by him subscribed to in my presence, on the 19th day of June, A. D. 1868.

D. B. BROWN, JR.,
United States Commissioner for the 3d Circuit.

The above affidavit may be admitted and used in place of the deposition of said John Good.

CAUSTEN BROWN, *for Complainant.*

953 The decree of this court of the tenth of November, A. D. 1870, was entered in conformity with the following opinion of the court, delivered October 25th, 1870, namely:

Circuit court of the United States, district of Massachusetts, October term, A. D. 1870.

ENOCH PIPER
vs.
JAMES BROWN ET AL.

Before Shepley and Lowell, JJ.

Opinion of the court.

SHEPLEY, *J.:*

The complainant, in his amended bill, avers: First, that he invented a certain improvement in the method of preserving fish and other articles, for which he obtained letters-patent of the United States, dated March 19th, 1861. Second, that he afterwards invented "an improvement in apparatus for preserving animal and vegetable substances," for which he obtained letters-patent, dated Aug. 5th, 1862.

He alleges that the respondents, without his permission or knowledge, have erected and used at Charlestown a certain apparatus for preserving fish and other articles, containing substantially the invention patented to him by the letters-patent dated March 19th, 1861, and also that patented to him by the letters-patent dated Aug. 5th, 1862.

The respondents, in their answer, deny that complainant was the original and first inventor either of the method described in his first, or the apparatus described in his second patent.

They also deny any infringement of the patents of complainant, and claim that the apparatus constructed and used by them at Charlestown was substantially different from the complainant's inventions, and was constructed under and according to an invention made by Charles F. Pike, and secured to him by letters-patent, dated June 12th, 1866. They deny that there is in the Charlestown apparatus "any close chamber," but aver that the air of the preserving-chamber comes directly in contact with the ice of freezing-mixture."

954 It is unnecessary to go into a minute examination of that portion of the proofs in the record which refer to the second patent of the complainant and the apparatus therein described; as complainants do not contend that the apparatus constructed by the respondents is included in the terms of the claims of the patent of August 5th, 1862, even if it does embrace the invention therein described.

The patent of March 19th, 1861, is not for the apparatus therein described. It is not a patent for any "machine, manufacture, or composition of matter." It must be sustained, if it be sustained, as a patent for an "art." The statute term "art," used as it is in the statute in the sense of the employment of means to a desired end or the adaptation of powers in the natural world to the uses of life, is perhaps a better term than the word "method" used by the patentee, or the word "process," the term of description used by the experts. A process eo nomine is not made the subject of a patent in the act of Congress. An art may require one or more processes or machines in order to produce a certain result or manufacture. (Corning et al. vs. Burden, 15 Howard, 252.)

It is for the discovery or invention of some practicable method or means of producing a beneficial result or effect that a patent is granted,

not for the result or effect itself. "Process" or "method," when used to represent the means of producing a beneficial result, are in law synonymous with "art," provided the means are not effected by mechanism, or mechanical combinations.

The term machine includes every mechanical device, or combination of mechanical powers and devices, to perform some function and produce a certain effect or result. But when the result or effect is produced by chemical action, or by the application of some element or power of nature, or of one substance to another, such modes, methods, or operations are called processes. (Corning vs. Burden, above cited.)

It follows, from the law as expounded by the Supreme Court of the United States, in Corning vs. Burden, and in O'Reilly vs. Morse—where the true distinction between a principle and a process is clearly defined in the explanations given by the court of the case of Neilson *vs.* Harford—that where a result or effect is produced by mechanical action, the patent can ordinarily only be for the mechanical appliances or means employed; where the result is attained or effect produced by chemical action, by the operation or application of some element or power of nature, or of some property in matter or of one substance to another, then the patent may be for the art, process, or method.

955 It is essential to the validity of the process as an invention, to show how it may be adapted to practical use. In showing this, the inventor may describe mechanical means of applying, or peculiarly shaped vessels for containing, any of the ingredients used in his process or art; but they constitute no part of his invention. Another person may discover new and useful means of applying or using the inventor's process, and be entitled to a patent for that improvement, without the right to use the process. So the inventor himself may discover such new means or invent new appliances, which may be the subjects of a patent to him, separate and apart from his patent for the art itself.

The complainant's bill claims as his invention an "improvement in the method of preserving fish and other articles." The method claimed is described as "a method of preserving fish, or other articles, by placing them within a chamber, and cooling the latter by means of a freezing-mixture, so applied that no communication shall exist between the interior of the preserving-chamber and that of the vessels in which the freezing-mixture is placed."

The patent describes it as "a new and useful method of preserving fish." The claim in the patent is "preserving fish or other articles in a close chamber by means of a freezing-mixture, having no contact with the atmosphere of the preserving-chamber, substantially as set forth."

Although a different construction is contended for by the respondents, and even the expert examined by the complainant seems to construe the claim and describe the invention in some respects inaccurately, the claim appears to the court to describe clearly and in language incapable of misconstruction, what is claimed as the new and useful art or method.

It is not that the patentee claims to have discovered the fact that no decay takes place in animal tissues, as long as they are kept a few degrees below the freezing-point of water, nor does he claim to have invented any means of producing artificial congelation. The active agent for producing congelation, and the effect of congelation on animal substances, was well known. But he claims that he was the first to discover and reduce to practice an art of producing and continuing this artificial congelation upon animal substances, enclosed in a chamber with

non-conducting walls, which chamber was a close chamber, that is, having no communication with the outer or surrounding atmosphere, and so constructed also that no communication shall exist between the interior of the preserving-chamber and that of the vessels in which the freezing-mixture is placed. This claim is not limited to a method of
956 supplying and renewing the frigorific mixture without exposing the animal substances in the preserving-chamber, and the atmosphere itself in the preserving-chamber to change of temperature from contact with the outer atmosphere, while the active agent of congelation—the frigorific mixture—is being supplied. It proceeds upon the farther and broader ground that an injurious effect upon the animal substances to be preserved results from the presence in the preserving-chamber itself of the salt and ice, or other freezing-mixture, affecting the atmosphere of the preserving-chamber. The patentee proposes to preserve animal substances in an atmosphere not materially affected by the temperature of the external atmosphere surrounding the chamber, because the atmosphere in which the animal substances are placed is confined by non-conducting walls in a close chamber, and, what is more important, in an atmosphere "freezing," because reduced to a low temperature by contact with the exteriors of the pipes containing the frigorific mixtures, and "dry," because free from contact with the freezing-mixture itself. His claim is for the method of "preserving fish or other articles in a close chamber, by means of a freezing-mixture, having no contact with the atmosphere of the preserving-chamber, substantially as set forth."

It becomes necessary to determine the date of the complainant's invention.

It clearly appears from the evidence in the case that, in June, 1858, the complainant devised an apparatus by which the freezing-mixture should be kept in such a way as to be separate from the atmosphere of the preserving-chamber. The preserving-chamber in this apparatus consisted of a hogshead surrounded by a casing of wood, leaving a space of a foot or more between the casing and the hogshead, which was filled with some non-conducting substance. A cast-iron tube about ten inches in diameter was placed in the center of each hogshead, fastened to the lower head by a flange, and making a water-tight joint between the iron and wood where it passed through the head of the hogshead, and also a water-tight joint between the lower end of the vertical iron tube and the bottom of the casing. The upper end of the tube projected six inches beyond the cover of the hogshead when the cover was on.

It is not seriously controverted that the complainant devised and constructed this apparatus in June, 1858; nor can it be successfully urged that it did not in fact separate the air of the preserving-chamber from contact with the freezing-mixture.

It is, however, claimed that Piper at this time had not conceived the idea of any advantage in such separation, apart from the convenience of renewing the supply of the freezing-mixtures without admitting the surrounding atmosphere into the preserving-chamber. This is equivalent to saying that, while his contrivance accomplished the
957 result of preserving fish and animal substances in the mode set forth in his caveat and subsequently in his specification and claim, a useful result of a new process, he was unacquainted with the philosophy of his discovery. Upon the hypothesis that this were so—that by a series of experiments he had discovered only that this process, applied exactly in the mode described, produced the desired result, and

the process was new and the result useful, but that he did not understand why the mixture of salt and ice produced a freezing-mixture, or why the effect of contact of that freezing-mixture with the atmosphere surrounding the fish to be preserved was injurious—yet, if he had discovered the practical mode and contrived the practical means of accomplishing the result, he might be entitled to a patent for his new and useful art, although ignorant of the philosophical or abstract principle which was involved in the exercise of the art itself.

The discovery of the philosophical or abstract principle alone would not have been the subject of a patent. The thing to be patented is not the elementary principle, but the principle applied to some art, machine, manufacture, or composition of matter. (Earl vs. Sawyer, 4 Mason, 1.)

Applying these principles to the facts in this case, and after a careful consideration of the evidence, we are not satisfied that there is any sufficient proof in the case that any other party had anticipated the complainant's invention. In the months of June and July, 1858, Piper appears to have reduced to practice his invention, by freezing fish and preserving them until the following December, in the apparatus constructed by him in June.

Whitson's apparatus was not constructed and used until the fall of 1860. There is much conflicting testimony in relation to the use by Joseph H. Racy of an apparatus like that described in the complainant's second patent. As the complainant does not in this case rely upon his second patent, it becomes immaterial to determine whether the apparatus which Racey claims that he constructed in a cellar under Centre Market, in New York, was constructed, as he claims, in the latter part of 1859, or, as the complainant contends, in 1862. If we were to assume the truth of Racey's statement that it was built in the latter part of 1859, that is more than a year after Piper's invention of the process described and claimed in his first patent.

John Good obtained a patent August 17, 1843, which was re-issued September 12, 1854, for preserving the bodies of deceased persons in a cold air-chamber, and not allowing the ice to come into immediate contact with the body. The apparatus patented by Good and used by him, and exhibited in this case, was not designed and intended to
958 prevent any contact of the atmosphere surrounding the body with the freezing-mixture or with the ice. It was designed to prevent the ice or freezing-mixture from coming in contact with the body itself. But the contact of the atmosphere surrounding the body with the ice or ice and salt in the bottom of the pan, was provided for by the perforated false bottom upon which the body rested. This false bottom prevented the contact of the body itself, and secured the contact of the atmosphere surrounding the body with the freezing-mixture when a frigorific mixture was used in the bottom of the pan.

Good's apparatus was capable, however, of being used in a manner different from the use described in his patent or in the directions given for its use by him to purchasers of his apparatus. By omitting the use of any freezing-mixture in the bottom of the pan, and using it only in the receptacle above the preserving-chamber in such a manner that the air of the preserving-chamber did not come in contact with the ice and salt above, it was capable of an use which involved the practice of the same process described in the complainant's first patent.

But this patent being for a process and not for any apparatus, to deprive the complainant of the benefit of his invention it is not sufficient to show that any previously existing apparatus could have been used

to practice the complainant's process. It must appear affirmatively to the satisfaction of the court or jury that it actually was put to such practical use before the date of Piper's invention.

One witness, John Reak, testifies substantially to such an use of the Good apparatus, but he cannot fix the date of his purchase earlier than 1857, and his use of it in any mode until two or three years after he purchased it, and fixes no date of the use of it in this particular mode. The testimony of Swartz, the other witness, is also indefinte as to date, and leaves it, to say the least, uncertain whether he ever produced the atmosphere in the chamber below the freezing-point of water. This object was not to freeze the body so as to preserve it for any length of time, but only by partially freezing the surface to arrest the progress of decomposition and prevent offensive exhalations.

Charles F. Pike, in the course of sundry experiments which he made with refrigerators, appears in one instance to have arranged an apparatus with which the plaintiff's process was once practiced, but it was used only once as an experiment, and abandoned, and the parts used for other purposes. As the knowledge of this experiment was not communicated to Piper, and it was a mere experiment thus abandoned, it could be no obstacle to the right of Piper to take out a patent for his process. (Cahoon *vs.* Ring, 1 Clifford, 592.)

959 The process of Benjamin and Grafton, described in their English patent, enrolled July 27, 1842, differs from the complainant's in many of its features, but particularly in this essential feature, that in the Benjamin and Grafton patent there is no description that the freezing-mixture, contained in the vessels in the preserving-chamber, is to be kept free from contact with the atmosphere of the chamber itself.

It is clear that the language of Piper's patent excludes the use of salt and ice in the same chamber with the fish to be preserved.

A statement that he contemplated such use, appears to have been inserted in his original application for his first patent, and stricken out from the amended specification on which the patent was granted. Such an use formed no part of his invention. In his original application this use of salt and ice was confined to the box for freezing, and was not made applicable to the chamber for preserving for a length of time the substances previously congealed.

The patent must be construed without reference to the previous correspondence, and previously rejected applications which cannot aid in its construction, especially as the patent issued correctly describes the complainant's invention.

The apparatus, as first used by the defendants, at Charlestown, contained a preserving-chamber, the air of which had no contact with the freezing-mixture, and it was used for the purpose of preserving animal substances by reducing the air in that chamber by means of the freezing-mixture to a temperature below the freezing-point of water, and in all respects appears to have involved the use of the process patented to the complainant.

The complainant is entitled to an injunction, and to an account, as prayed for in the bill of complaint. The cause is to be referred to a master to ascertain the amount. Let the decree be prepared accordingly.

961 The decree of this court of the tenth of February, A. D. 1873, was entered in conformity with the following opinion of the court delivered February 10th, 1873, namely:

Circuit court of the United States, district of Massachusetts, October term, 1872.

ENOCH PIPER
v.
JAMES BROWN ET AL.

Before George F. Shepley, J.

Opinion of the court.

SHEPLEY, *J.*:

Exceptions were duly taken to the report of the master in this case by both complainant and respondents.

Complainant excepts, that the master finds as a fact that the respondents, by preserving fish by the patented process, and withdrawing
962 them from the market during the season of abundance, have been enabled to demand, and have received a large price for their green unpreserved fish remaining in their hands for sale, in the market; that they have received for such green fish one and one-half cents per pound more than they would have done had they not withdrawn from the market the preserved salmon; and that the amount of green fish on which such advanced price was received, was 413,612½ pounds, making a total profit of $6,204.19, and he claims that the master erred in disallowing the item of 6,204.19 profits resulting from the enhanced price of green fish. The master finds that the gain and profits to the respondents resulting from said enhanced price of one and one-half cents per pound on the sales of green fish in the said year, is not gain or profit with which respondents are to be here charged, because it is an incident of trade too remote and indirect to be charged in this account.

963 Where profits are recoverable by the owner of a patented invention, against an infringer, they are such profits or gains as result directly or immediately from the wrongful act of the infringer. Remote and contingent profits and gains, depending upon the result of successive schemes or investments, are never allowed. The resultant profits are ordinarily best arrived at by determining the difference between the actual ascertained cost and the actual ascertainable value to the infringer, which value, in case of sales by him, is the price obtained, or the market-value of the thing sold. Profits contingent upon future bargains or speculations, or future states of the market are not estimated, and are not recoverable. The distinction between such profits as are direct and immediate and those which are remote and contingent is recognized in Masterton v. Mayor of Brooklyn, 7 Hill, 61, and the Philadelphia W. and B. Railroad v. Howard, 13 Howard, 307.

964 The second exception of the complainant is to the finding of a fact by the master. The master found as a fact that, by the alterations made during the season of 1870 in defendants' apparatus, the atmosphere of the preserving-chamber mingled with the atmosphere of the chamber containing the freezing-mixture, making practically one atmosphere. The whole evidence upon which the master based this finding is not reported; in fact the report leaves it to be inferred that upon this question, in addition to the light afforded by the evidence of experts introduced by the defendants, the master was aided by the evidence of his own examination of the premises at Charlestown, at an in-

spection of them made by him in the presence and by consent of the parties. Under such circumstances the finding of the master on a question of fact will not be reversed. (Sparhawk et ux. v. Wills, 7 Gray, 423; Boston Iron Co. v. King, 2 Cush., 405; Adams v. Brown, 7 Cush., 222.)

965 Repondents except to the master's report as to his findings in respect to the operations of the year 1870.

The respondents having been enjoined by the court from the use of their Charlestown apparatus, as used by them in 1866 and 1867, continued, during the years 1868 and 1869, to preserve fish by the plaintiff's process in a similar apparatus, situated in Cambridge, and belonging to other parties. Such use of the Cambridge apparatus having been also adjudged an infringement, they returned, in the year 1870, to the use of the building in Charlestown. The master finds that the apparatus at Charlestown was originally so constructed that its use by them for the purpose of freezing and preserving fish was an infringement of the complainant's patent. They attempted to satisfy the master, and did satisfy him, that at some time between the 20th of June and the third of December, 1870, they so altered their apparatus that it could be used without infringing complainant's

966 patent. Whether it was so altered before December 3rd, 1870, they did not prove. The finding of the master that the use of the apparatus so altered would not infringe the complainant's patent was certainly as favorable for the respondents as the evidence would justify. The expert who testified upon the subject did not believe that it made any practical difference in the process whether the openings between the two chambers were large or small. He rejects the whole theory upon which complainant applied for his patent, and utterly ignores any utility in the process of the plaintiffs, so far as it is distinguishable from other known processes and patented to him. From his point of view, the communication between the atmosphere of the two chambers being productive of no change whatever, being entirely immaterial, (except during the time of replenishing the chamber containing the freezing-mixture,) the smallest orifice be

967 tween the two would have been as available to take the apparatus out from the pale of infringement as the largest, and this he frankly states in substance in his testimony. Respondents could not reasonably object that a finding was not sufficiently favorable to them based upon this evidence. In coming to this conclusion the master was unquestionably aided, if not governed, by the evidence of his own senses when he made the personal inspection. But at Charlestown he did not witness the process; he only saw a part of the apparatus not in use. Respondents contend that, the master having found that the alterations made at some time prior to December 3rd were such that the use of the altered apparatus to preserve fish would not infringe the patent, the burden of proof was then upon the complainant to show that the apparatus when used was restored to its former state. The answer to this position is, that the master

968 has never found any change in the process or in the apparatus in use. Respondents exhibited to the master such portions of the apparatus as were not in use, but neglected, and on request refused to exhibit the chamber in which the fish of the catch of 1870 was being preserved. The patent is for a process, not for an apparatus. The exhibition of the modified apparatus not in use was of little moment compared to the exhibition of that part of the apparatus in which the

rocess was going on. This apparatus, or this portion of the apparatus in which defendants preserved salmon in Charlestown in 1870, was never shown to the master to have contained the alterations in the summer of 1870, at the time the freezing and preserving was in progress.

No commissions were paid by defendants for selling the fish preserved by them. It is not customary, in estimating profits from
969 an infringement, to allow the infringing parties compensation for their own time and labor. The master's decision rejecting the allowance of commissions is sustained. His report is also sustained upon the other points to which exceptions are taken, for the reasons stated by him in his report.

970

971 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record and of all proceedings in the cause of Enoch Piper, in equity, v. James Brown et al., in this court determined.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

[SEAL.] JOHN G. STETSON, *Clerk.*

972

973 *Bond to party on appeal.*

Know all men by these presents that we, James Brown and William Seavey, of Charlestown, in the county of Middlesex, and State of Massachusetts, as principals, and Thomas A. Rich and Willis Baker, of Boston, in the district of Massachusetts, as sureties, are held and firmly bound unto Enock Piper, of Camden, in the county of Knox, and State of Maine, in the full and just sum of eighteen thousand dollars, to be paid to the said Enoch Piper, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated the nineteenth day of February, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas lately, at a circuit court of the United States for the first circuit, holden at Boston, within and for the district of Massachusetts, in a suit in equity depending in said court between said Enoch Piper, complainant, and said James Brown and William Seavey, defendants, a decree was rendered against the said James Brown and William Seavey; and the said James Brown and William Seavey having obtained an appeal to remove the said cause to the Supreme Court of the United States next to be holden at Washington, to reverse the decree in the aforesaid suit:

Now, the condition of the above obligation is such, that if the said James Brown and William Seavey shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their plea

good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

JAMES BROWN. [L. S.]
WM. SEAVEY. [L. S.]
THOMAS RICH. [L. S.]
WILLIS BAKER. [L. S.]

Signed, sealed, and delivered in presence of—
JOHN G. STETSON, to Seavey, Rich, and Baker.

Approved:

JOHN LOWELL,
Dis. Judge.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

(Indorsement on cover:) No. 239. James Brown & William Seavey, appellants, vs. Enoch Piper. Massachusetts C. C. U. S. Filed 14th October, 1873.

	Salaries.	Store-rent.	Freight & cartage.	Advertising.	Travelling expenses.	Commission & collecting.	Stationary & printing.	Telegraphing.	Office furniture, fixtures.	Expressage.	Varnishing, tuning, cleaning, repairing, &c., &c.	Stamps.	Labor.	Tools.	Dusters & chamois-skins.	Piano-rent.	Sprinkling.	Sundries.	Coal & gas.	Mercantile agency.	Legal fees.	Insurance.	Revenue-tax.
1869.																							
October	64 15	138 90	86 75	104 65	165 93	103 64	7 99	1 25	35 00	4 23	10 50	11 28	3 50	4 50	2 00	00	1 00	5 53	00	00	00	00	00
November	4 29	166 67	188 63	107 56	85 78	71 73	00	13 19	1 25	1 75	13 25	3 75	00	3 00	00	00	00	16 18	8 50	50 00	50 25	00	00
December	127 00	166 67	223 01	115 43	1,383 35	2 36	127 65	2 29	23 80	2 75	32 50	8 50	00	00	1 50	10 00	00	19 73	50	00	00	00	00
1870.																							
January	31 50	166 67	148 84	79 67	3 78	130 31	52 75	6 77	00	00	8 00	8 82	00	00	3 90	00	00	34 84	00	00	00	00	00
February	3 00	165 67	106 14	338 44	3 70	229 08	36 75	7 40	00	2 05	14 37	5 00	4 50	00	40	00	00	22 12	8 00	50 00	5 00	00	00
March	9 50	166 67	147 30	97 00	223 97	281 25	16 24	1 10	00	5 50	21 42	10 50	4 00	00	00	24 00	00	5 91	00	00	00	50 00	00
April	4 00	166 67	109 60	84 60	2 57	44 85	169 89	2 00	2 55	2 40	37 54	9 15	00	00	00	00	00	2 24	3 25	00	00	00	00
May	36 00	166 67	48 30	2,990 35	38 94	106 85	39 24	2 25	00	00	19 62	11 25	4 50	.....	00	00	1 00	1 83	00	00	00	00	00
June	69 00	166 67	259 35	471 00	33 41	69 75	22 75	60	80	1 89	70 83	12 50	00	00	00	00	2 00	7 09	00	00	193 80	21 25	00
July	4 50	166 67	48 76	27 50	85 83	148 75	55 55	35	00	95	9 80	4 48	25	00	00	00	2 00	4 81	00	00	00	00	50 00
August	6 00	166 67	45 12	7 00	1 63	81 60	37 50	35	5 17	00	12 00	3 25	00	00	00	00	2 00	45 35	00	00	00	00	00
September	4 50	166 67	218 99	74 00	85 11	30 24	109 60	10	00	00	17 35	8 00	00	00	00	00	2 00	6 17	00	50 00	00	00	00
October	00	166 67	93 65	80 25	16 39	21 88	17 00	1 20	00	00	9 25	6 08	00	00	00	23 00	2 00	28	00	00	00	00	00
November	24 00	166 67	127 18	32 00	30	85 25	135 85	2 10	25	60	7 50	2 50	3 00	00	3 00	00	2 00	72	4 62	00	00	00	00
December	99 00	166 67	236 81	189 00	5 60	26 22	309 22	1 00	00	40	19 00	7 65	8 00	00	00	9 00	00	24 85	7 20	00	00	00	00
1871.																							
January	30 00	166 67	130 06	299 10	5 93	1 00	18 00	50	00	4 50	10 00	4 70	2 00	00	38	00	00	20	7 05	00	00	00	00
February	00	166 67	88 43	93 25	56 10	35 00	12 60	60	00	00	13 62	1 95	1 00	00	00	00	00	1 45	7 88	62 50	00	00	00
March	00	166 67	188 67	53 95	80 35	188 25	164 69	90	00	10	00	5 75	00	00	00	00	00	45	60	00	00	42 50	00
April	10 00	166 67	230 66	270 50	101 30	209 00	30 01	2 73	76 03	00	1 75	10 65	44 55	4 00	35	00	00	60	1 20	00	9 30	00	00
May	60 64	125 00	300 21	1,866 85	00	147 80	42 00	00	94 50	1 00	19 75	9 73	4 00	00	2 30	00	2 00	36 63	00	00	10 00	00	00
J. M. Tremaine	13 70																						
W'm Stevens	237 25																						
Carl Shaal	1,096 00																						
Oscar Schiller	107 00																						
Geo. Hildebrandt	94 00																						
Benj. Lipker	76 00																						
J. E. Morauski	68 00																						

Recapitulation.

Salaries	3,595 33
Store-rent	3,263 96
Freight & cartage	3,026 46
Advertising	7,382 10
Travelling expenses	2,379 97
Com'ns & collecting	2,184 14
Stationery & printing	1,405 28
Telegraphing	47 78
Office furniture, fixtures	239 35
Expressage	28 12
Varnishing, tuning, cleaning, repairing, &c., &c	348 05
Stamps	145 47
Labor	79 30
Tools	11 50
Dusters & chamois-skins	13 73
Piano-rent	66 50
Sprinkling	16 00
Sundries	238 98
Coal & gas	48 80
Mercantile ag'cy	212 50
Legal fees	268 35
Insurance	113 75
Revenue-tax	50 00
	$25,165 44
By exp'se ac	993 80
	24,171 64

American Wood Paper Co.

No. 505. vs. Page 73.

Fibre Disintegrating Co.

No. 25,418.

Morris L. Keen's

Improved Boiler, for boiling Paper Pulp under Pressure.

Fig. 1.

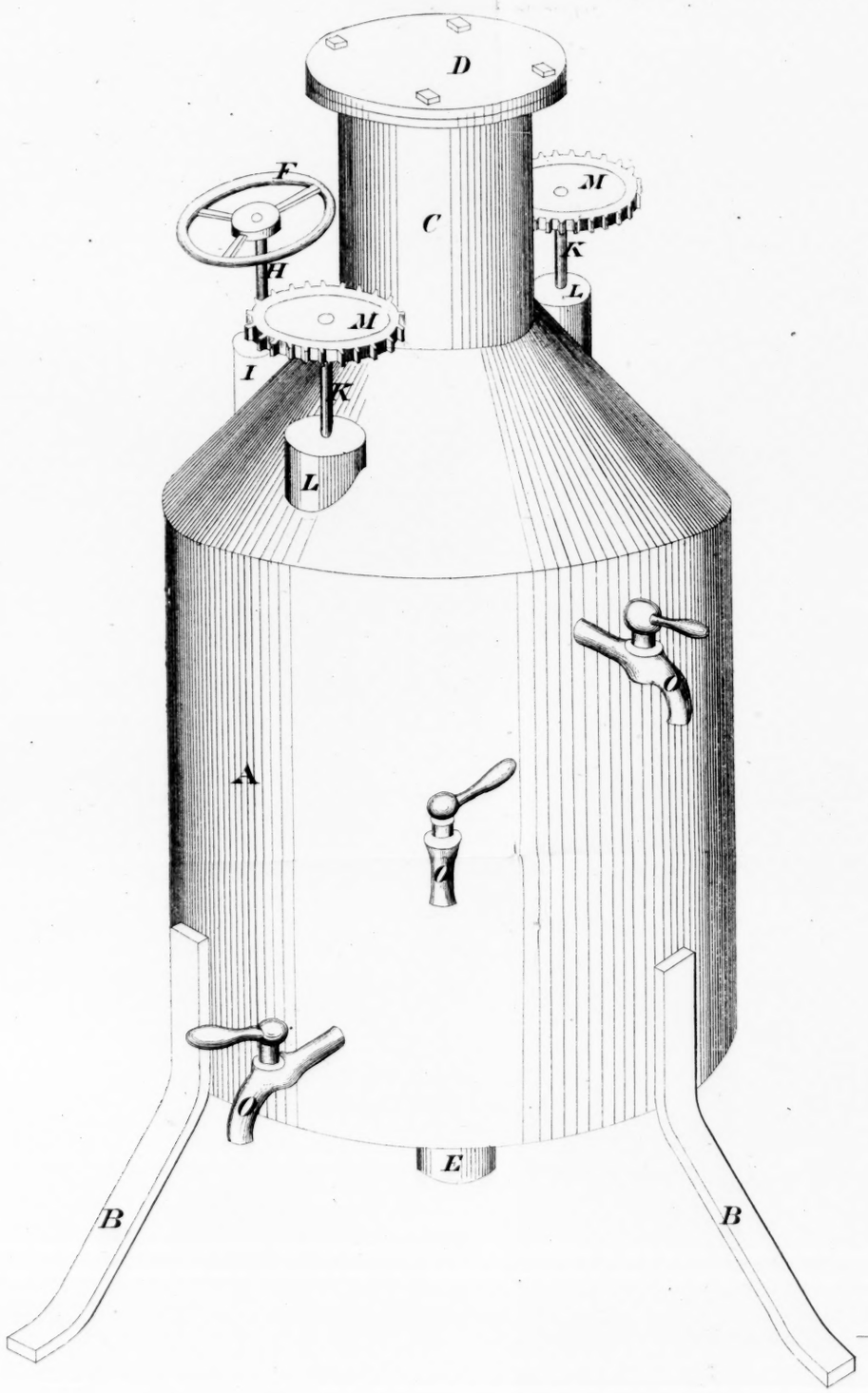
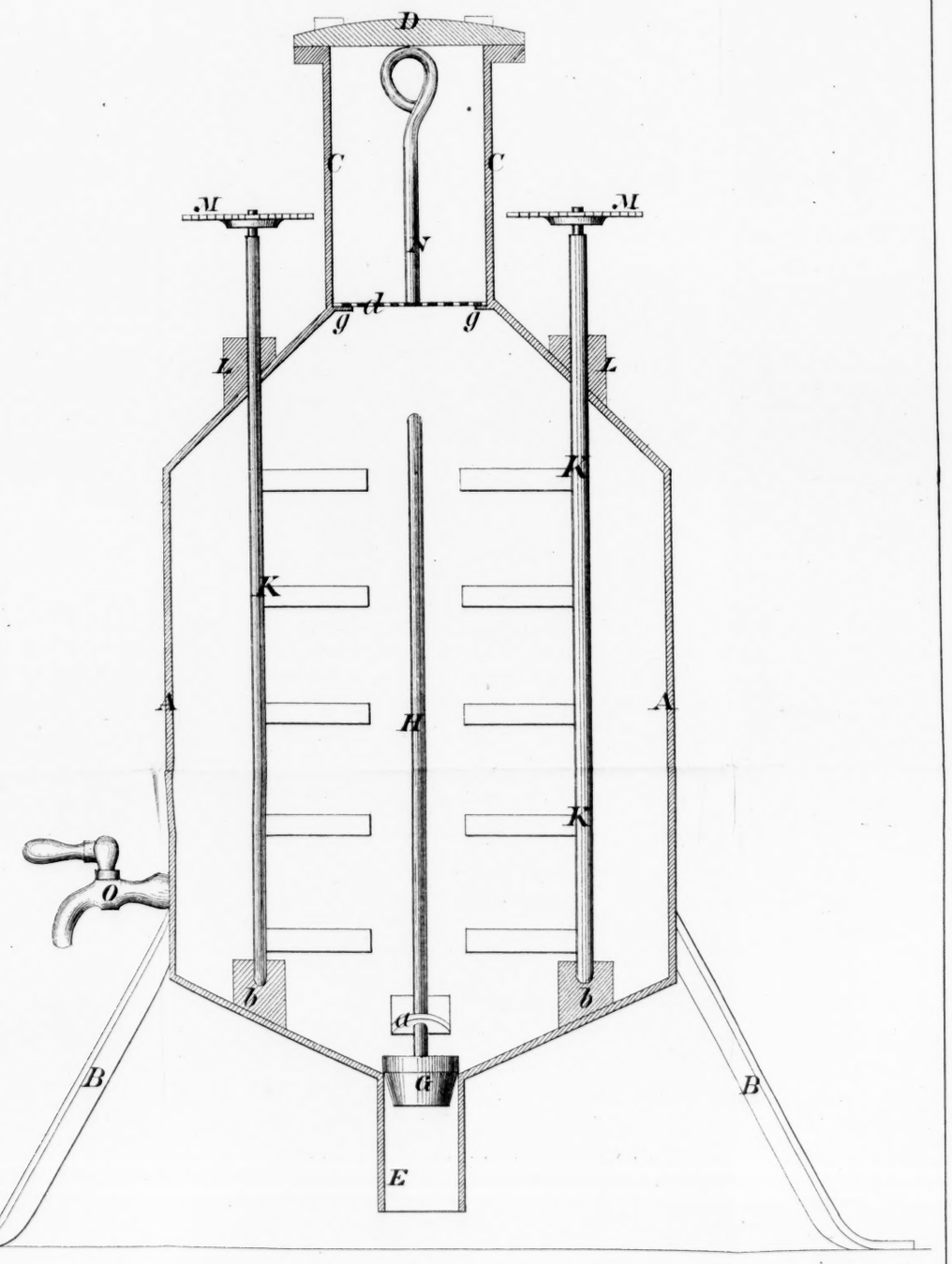


Fig. 2.



Correctly attached

Arthur L. Mc Intire, Drf. P. Off.

Witnesses

Ephraim Miller,

Hugh Burgess.

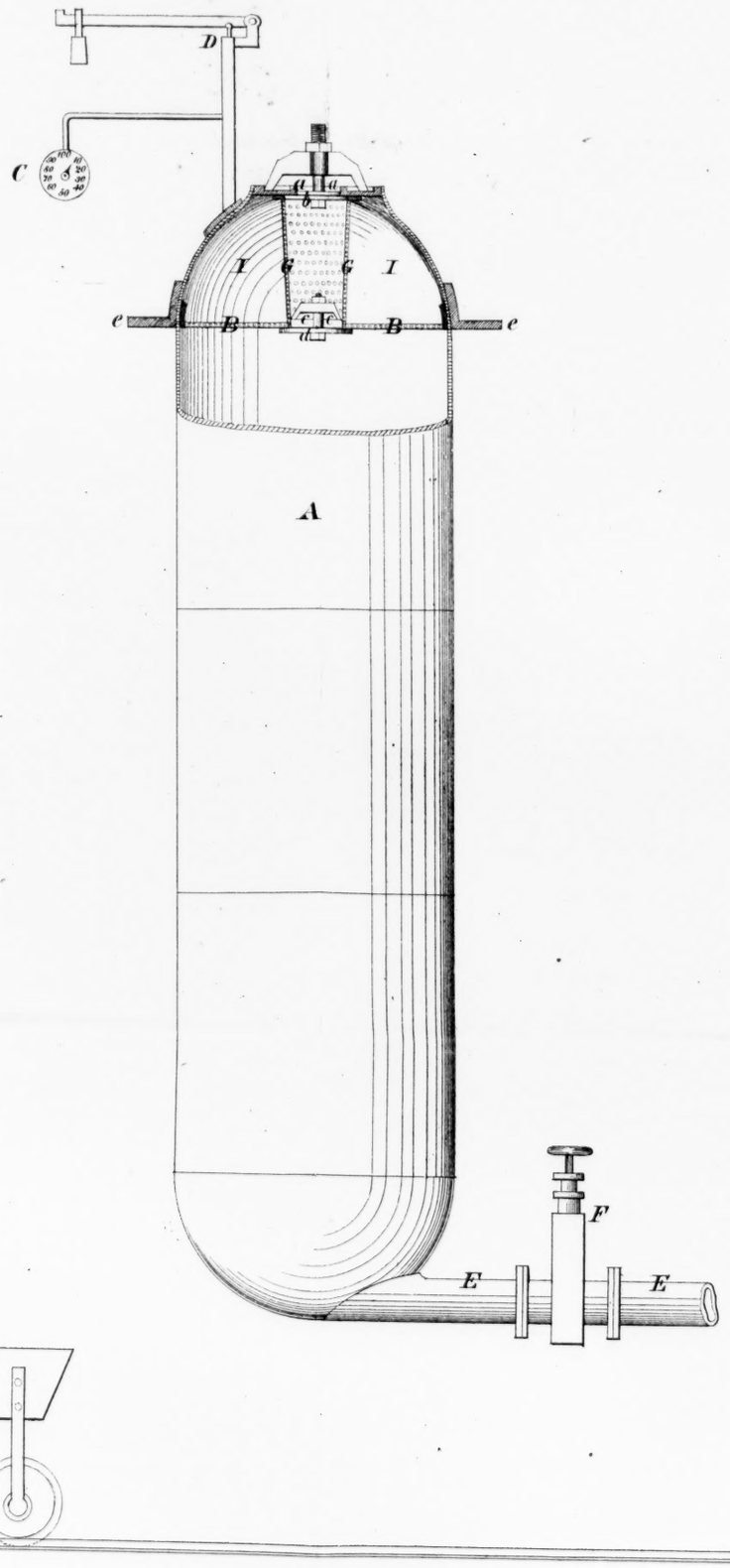
Morris L Keen.

No. 38,901.

Morris L. Keen's

Improvement in Boilers, for boiling paper pulp, and other material.

American Wood Paper Co.
vs.
Fibre Disintegrating Co.
No. 505. Page 78.



Correctly attached
E. W. W. Griffin,
Ass't Draughtsman, Pat. Off.

Witnesses
A. B. Stoughton,
Haver. Fendrich.

Morris L. Keen.

Henry B Herrick

American Wood Paper Co.

No. 505. vs. Page 479.

Fibre Disintegrating Co.

Exhibit No 36

B. L. Sharon

Examined

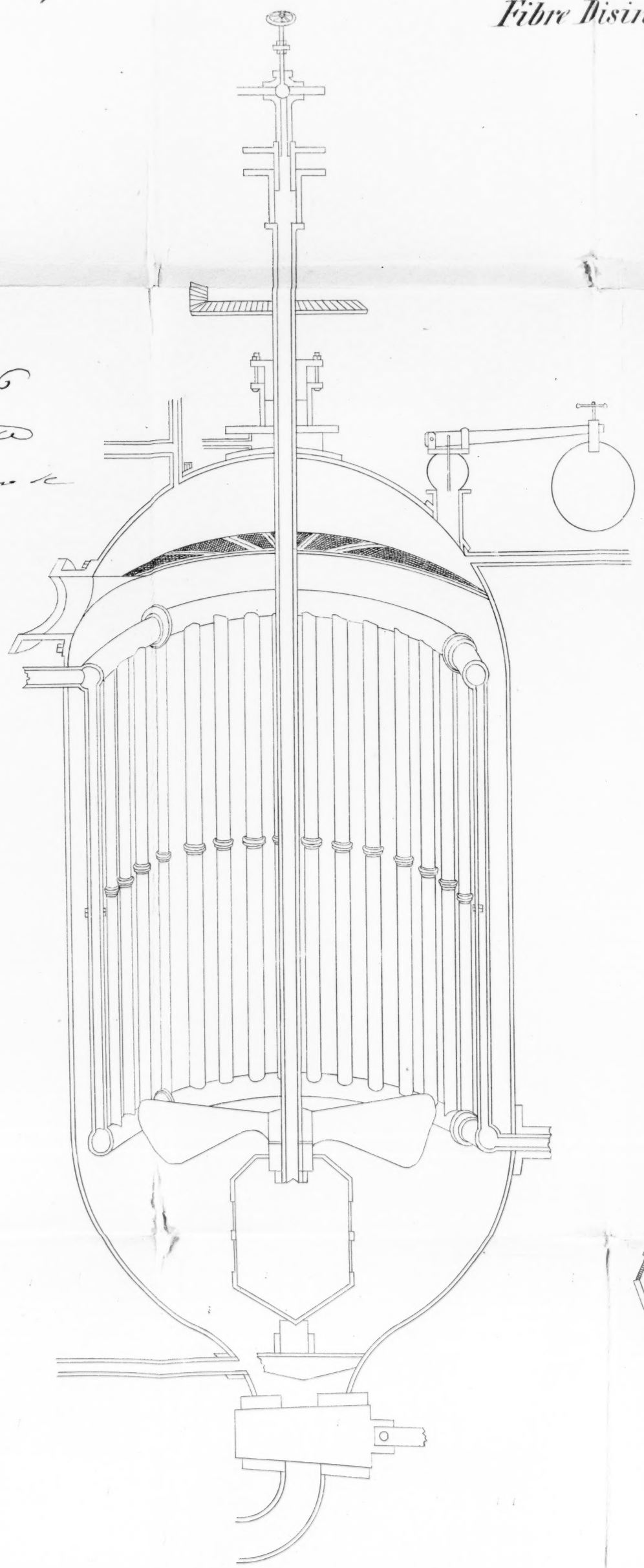


Fig. 2.

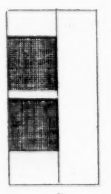
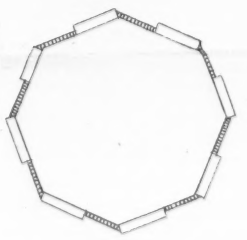


Fig. 3.



Keen

Exhibit Y' Hrg

No. 505. American Wood Paper Co. vs. Fibre Disintegrating Co. Page 576.

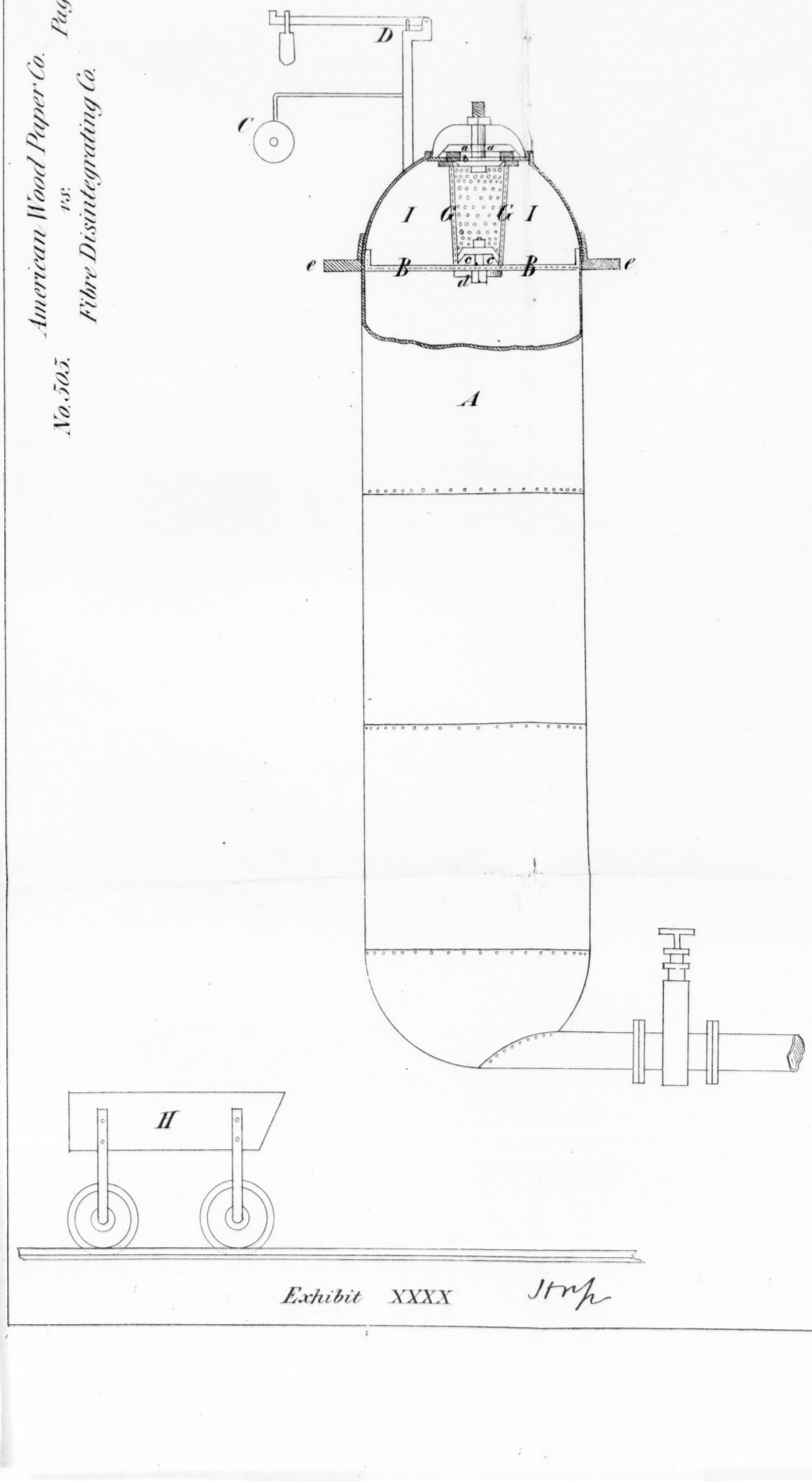
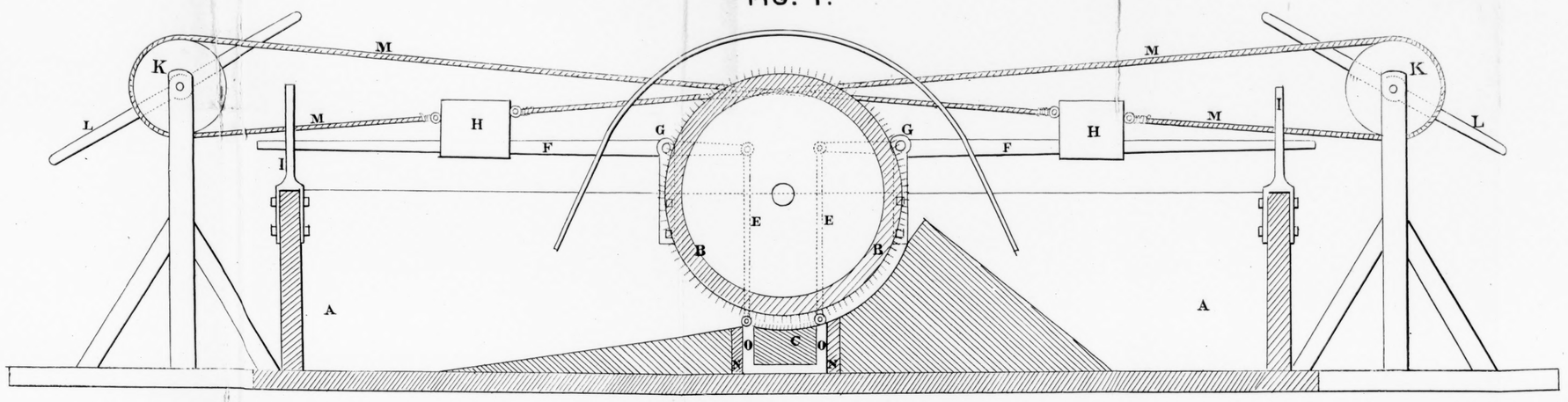


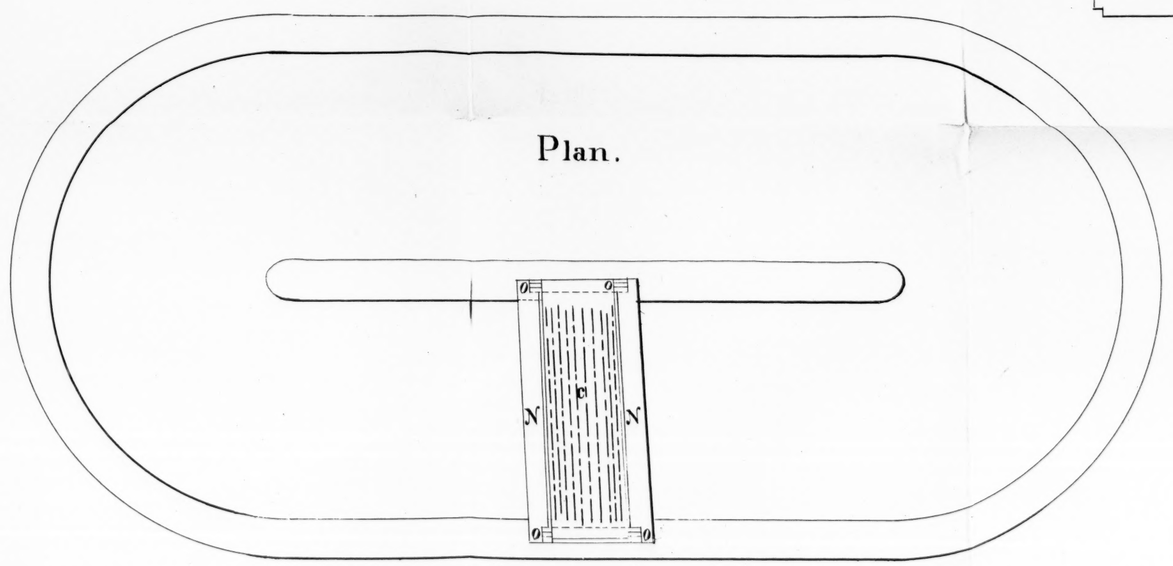
Exhibit XXXX

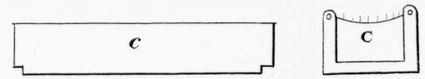
A.D. 1838. Nov. 3. No. 7850.
Cooper's Specification.

(1 SHEET)

FIG. 1.







No. 505 American Wood Paper Co.
v.s.
Tibbe Disintegrating Co. page 617

A.D.1843. June 15 № 9787.
WRIGHT'S Specification.

(3 SHEETS)
SHEET 3.

No. 505 AMERICAN WOOD PAPER Co.
v.s.
Fibre Disintegrating Co. *Page 633*

FIG. 1.

FIG. 2.

7

No. 505 AMERICAN WOOD PAPER Co.
V.S.
Fibre Disintegrating Co. *Page 633.*

AD 1843, JUNE 15 N° 9787.
WRIGHT'S SPECIFICATION.

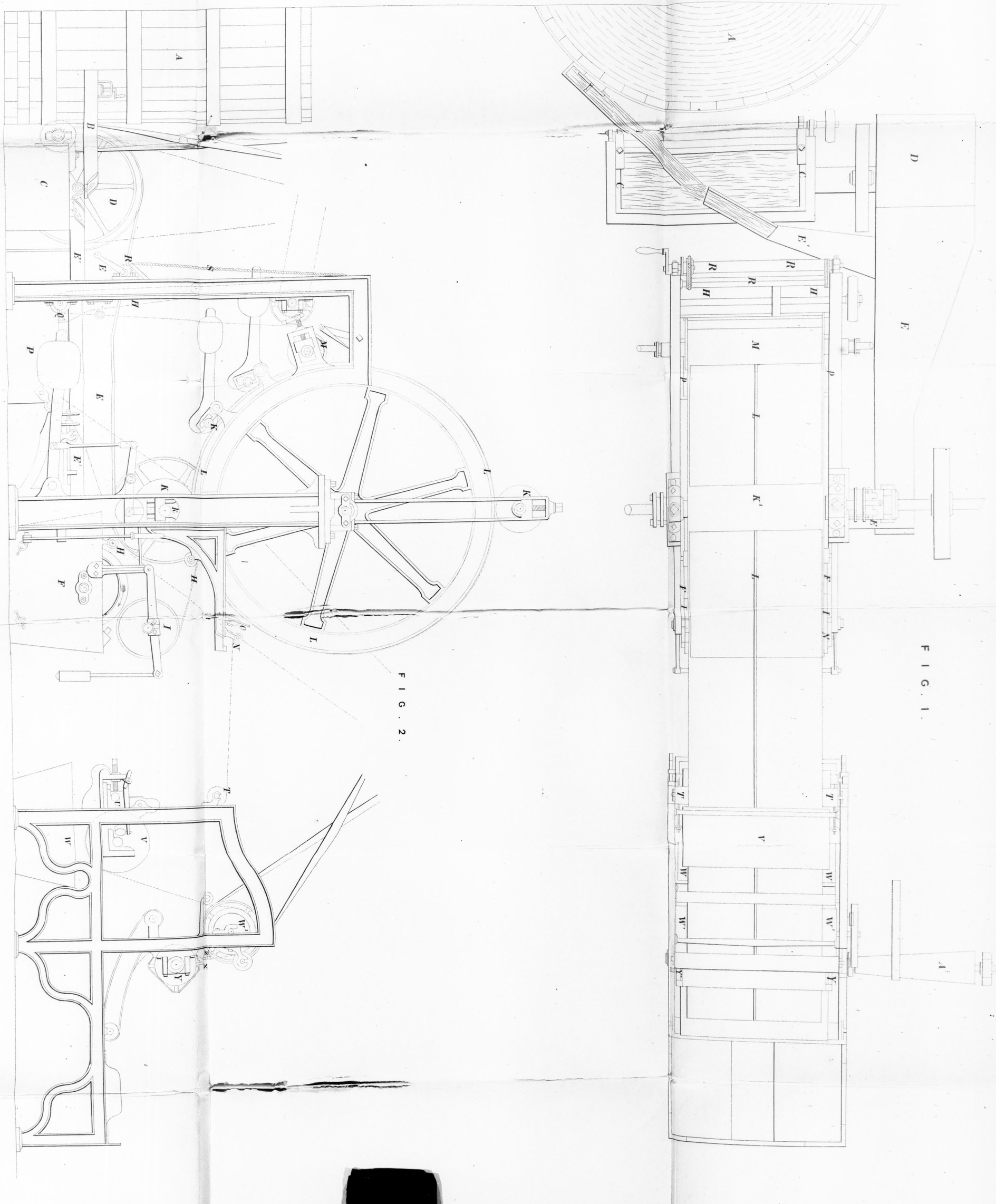


FIG. 1.

FIG. 2.

A.D. 1843. June 15. No. 9,787.
Wright's Specification.

American Wood Paper Co.

No. 505. vs. Page 633.

Fibre Disintegrating Co.

(3 Sheets)
Sheet 2.

Fig. 1.

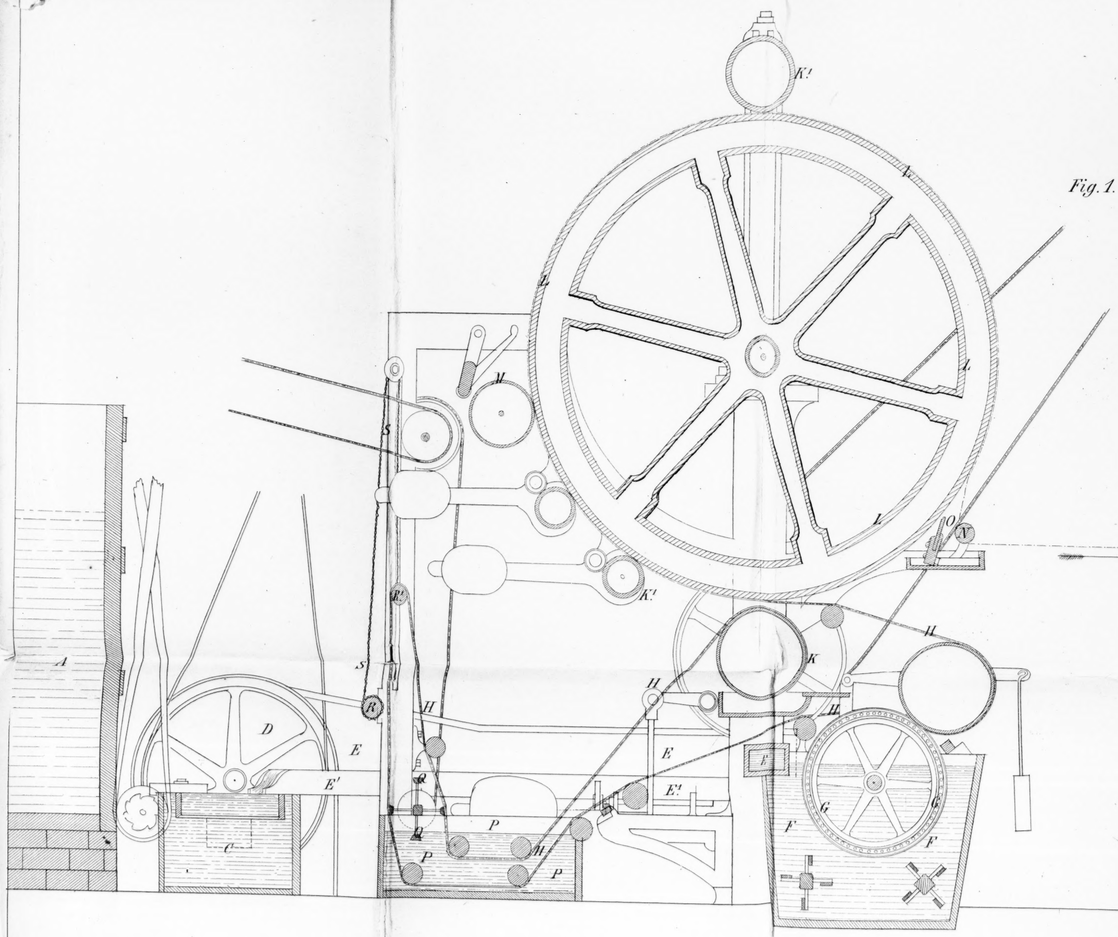


Fig. 3.

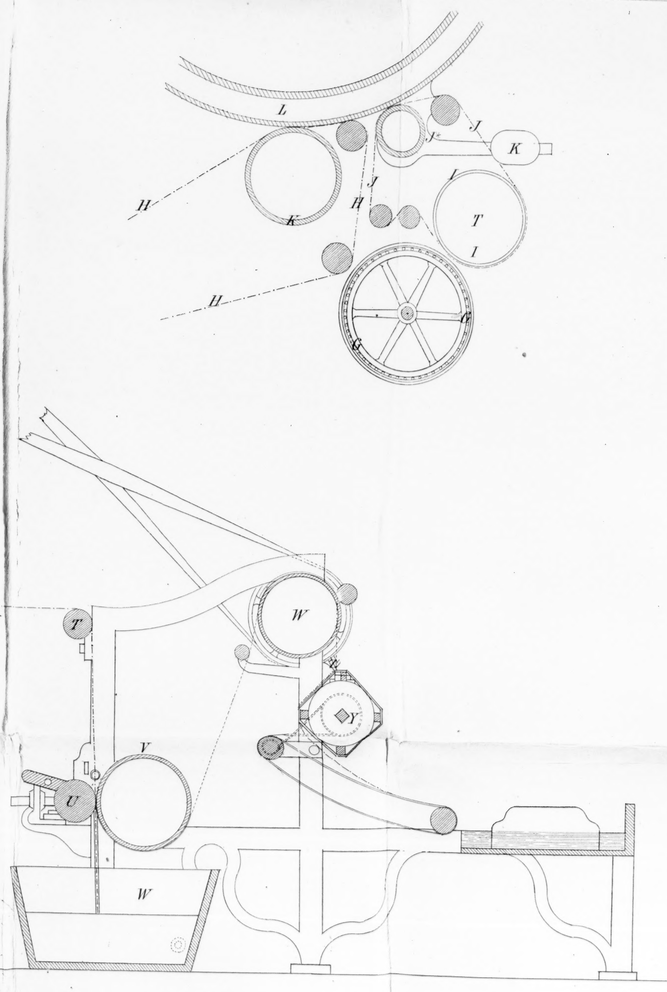
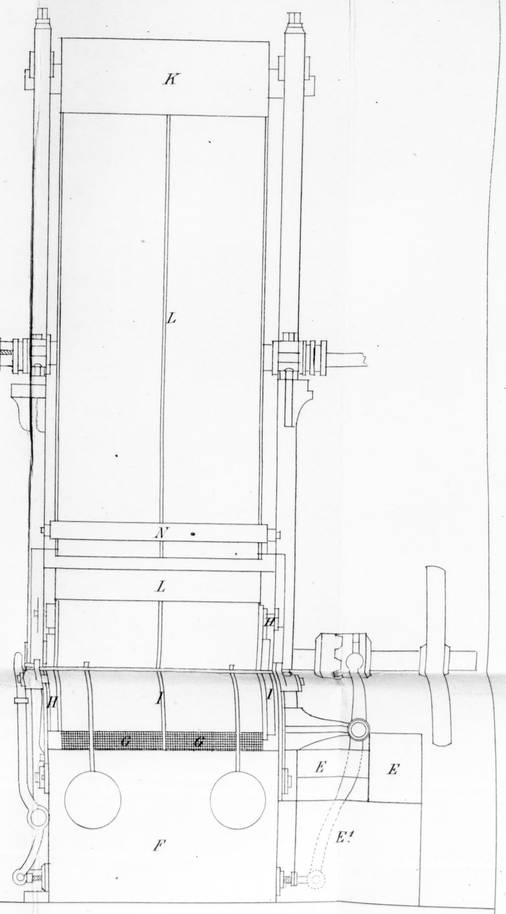


Fig. 2.



A.D. 1843 June 15. No. 9787.
Wright's Specification.

American Wood Paper Co.
No. 505. vs. Page 633.
Fibre Disintegrating Co.

(3 SHEETS)
Sheet 1.

FIG. 1

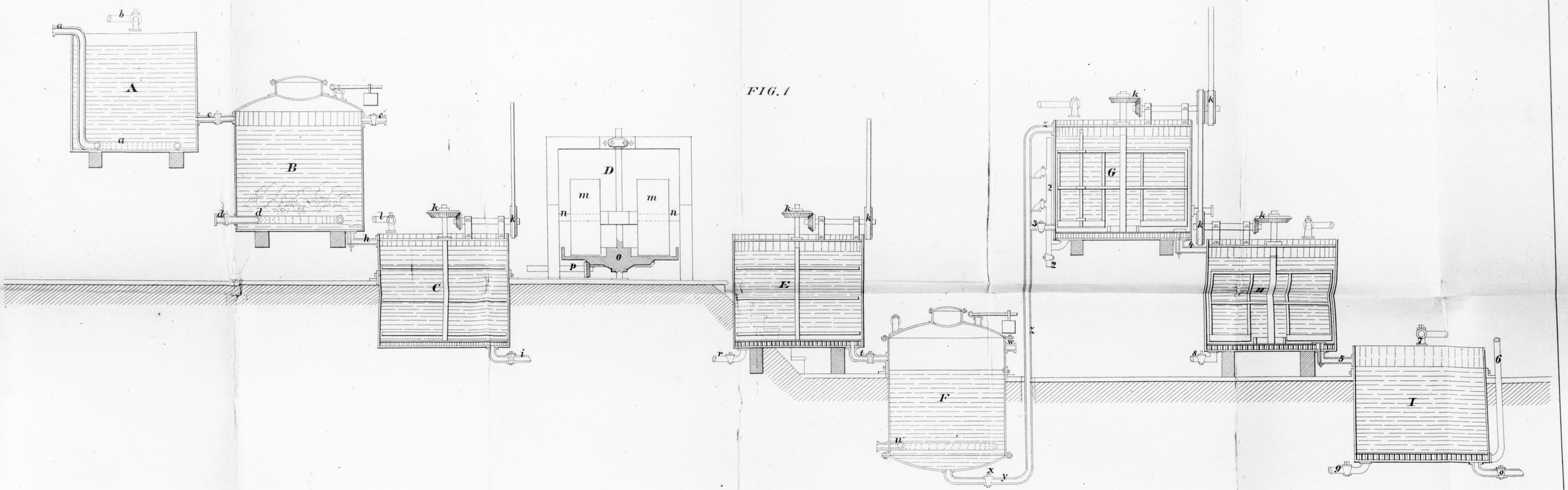
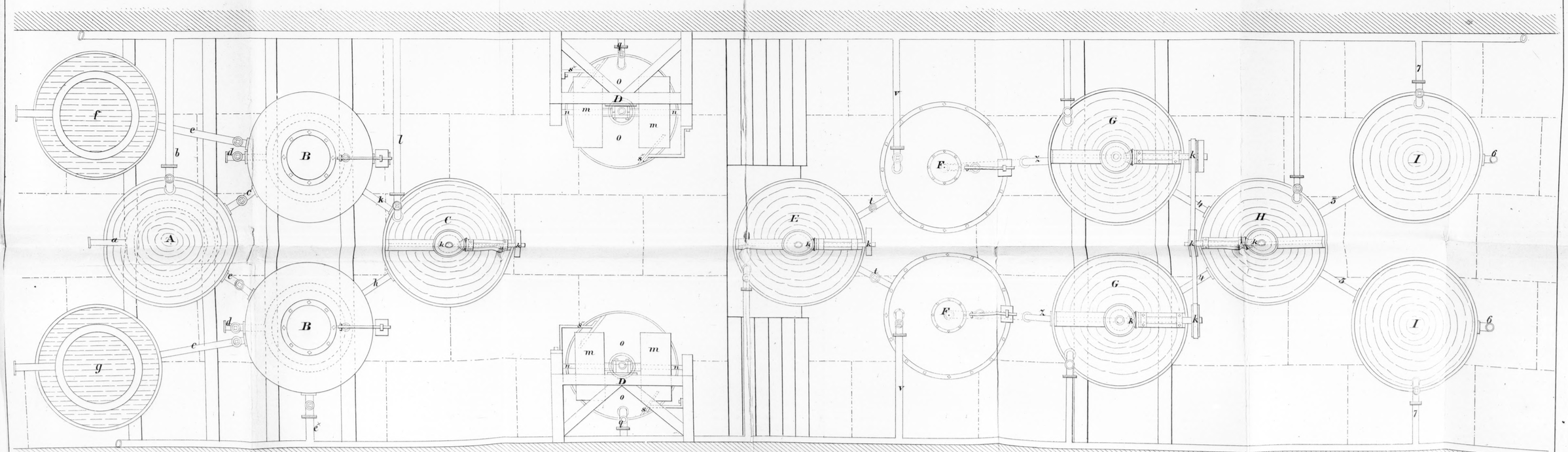


FIG. 2.



No. 9910.

Coupier & Mellier's

Process for making Paper Pulp

Patented Aug. 2nd 1853.

Exhibit 17
Aug, 2 1853
Coupier & Mellier
From 7 May 1851.

Filed May 21. 1869

Fig. 1

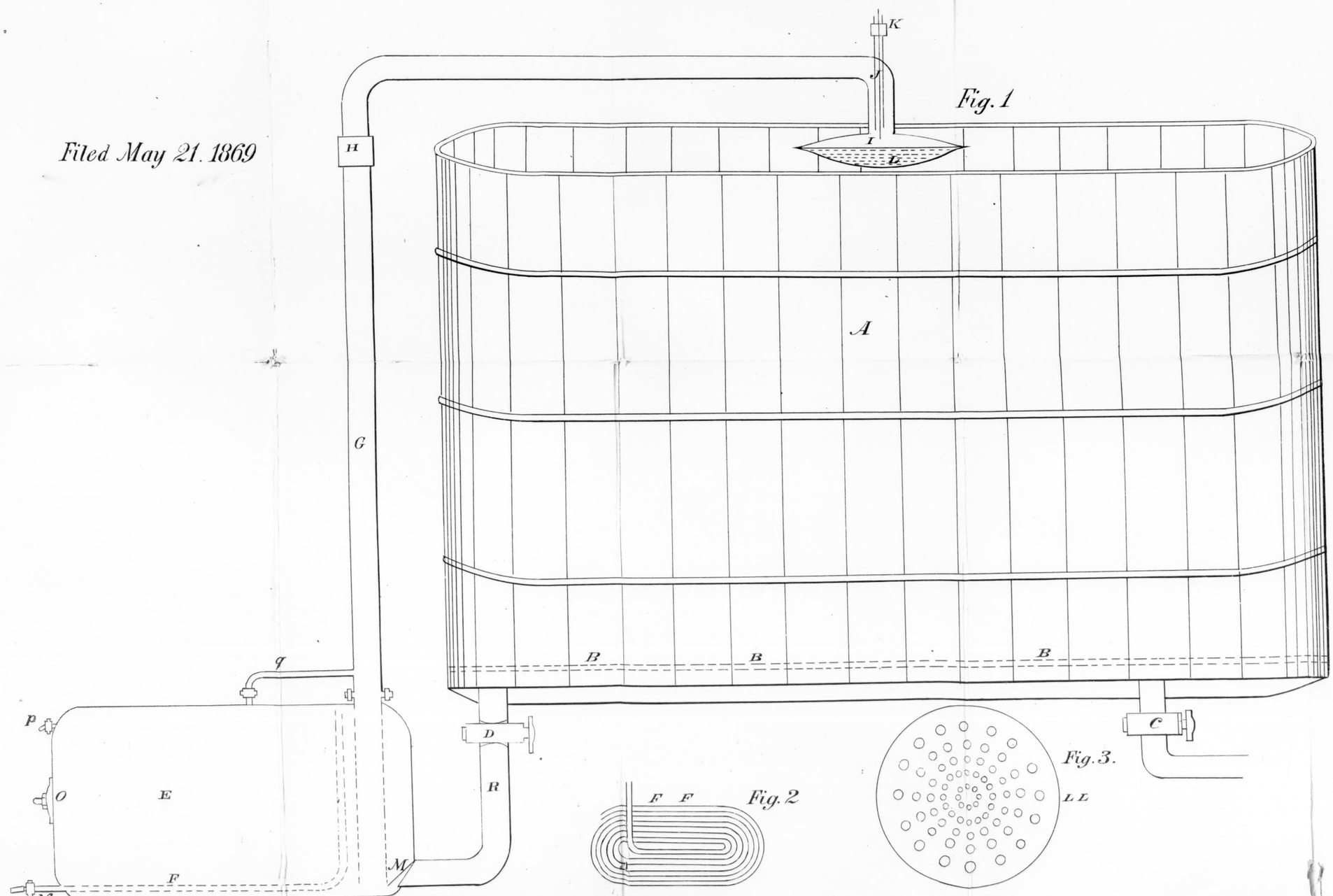


Fig. 2

Fig. 3.

No 505. American Wood Paper Co.
vs
The Disintegrating Co. Page 659.

J. Campbell - Assignee of G. Spafford's.

Turning Digester.

Reissued June 11. 1850.

No. 171.

Fig. 1.

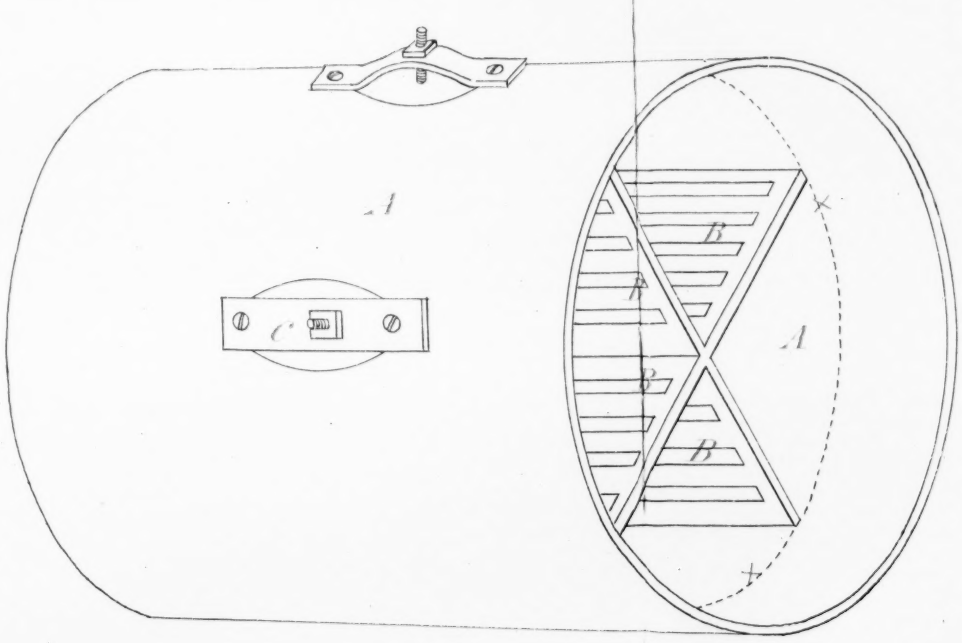


Fig. 2.

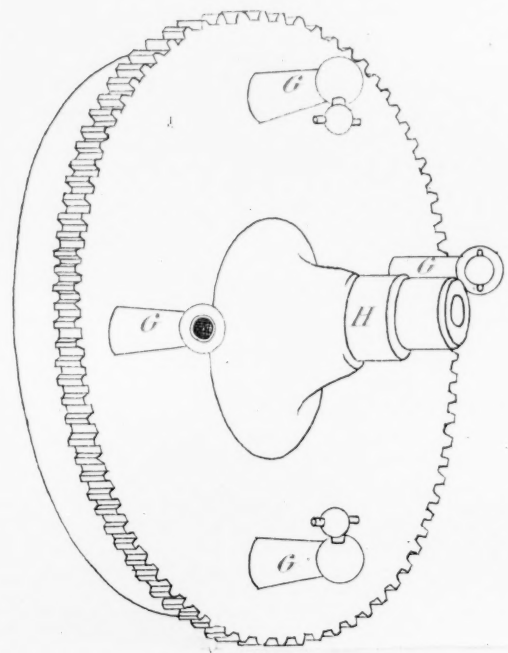
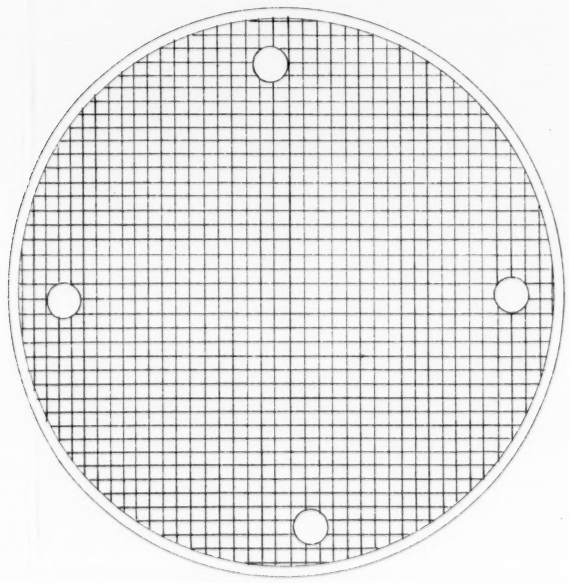


Fig. 1.



American Wood Paper Co.

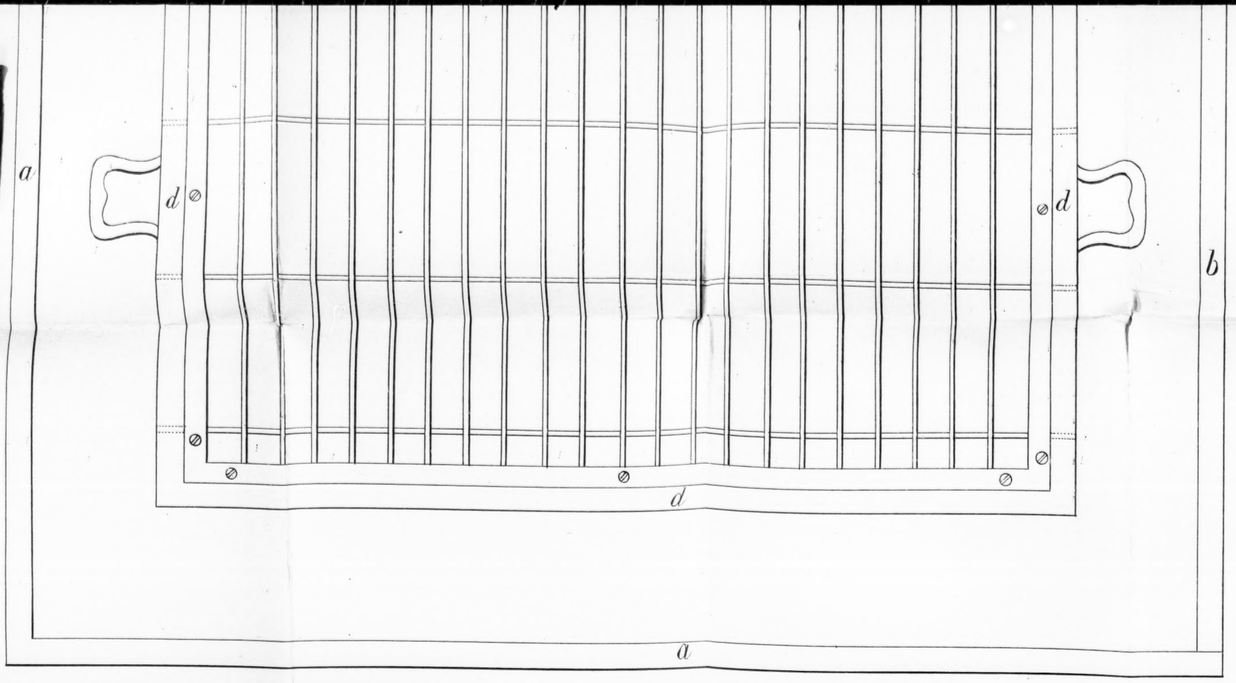
No. 505. vs. Page 676.

Fibre Disintegrating Co.

Spofford.

Exhibit 18.

Filed May 21. 1867.



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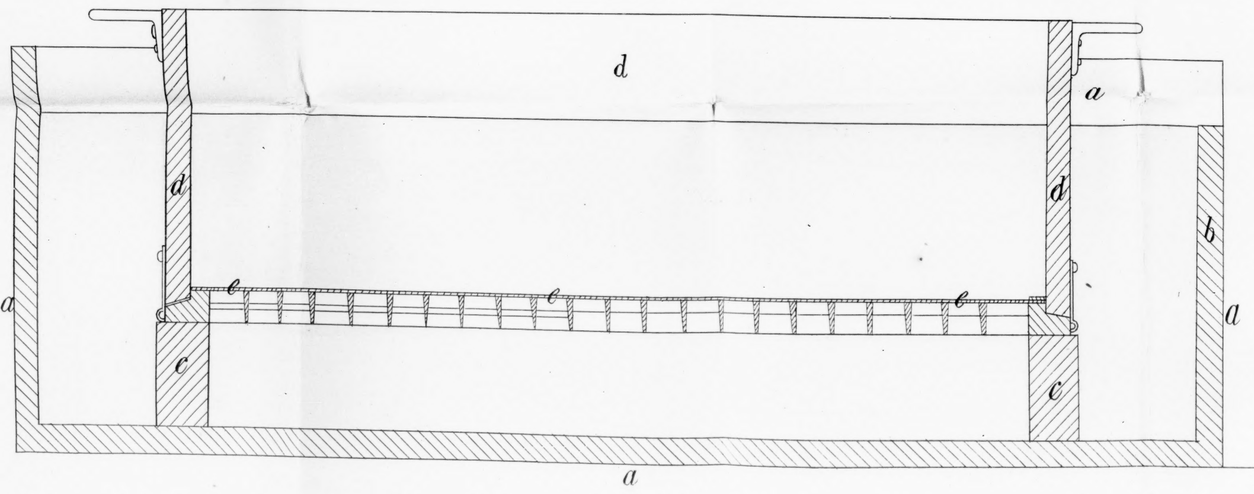
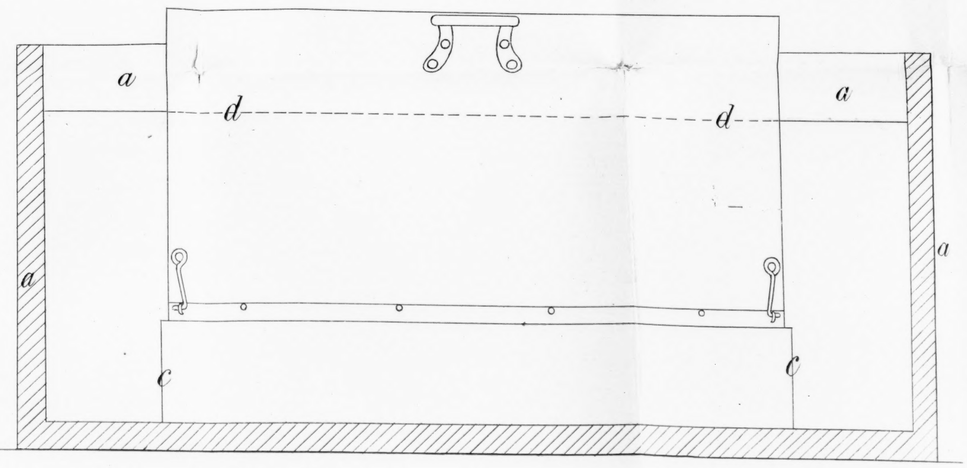
vs
Fibre Disintegrating Co.
Page 25

Longitudinal vertical section of water box a pulp box d and wire mould e

Fig 3.

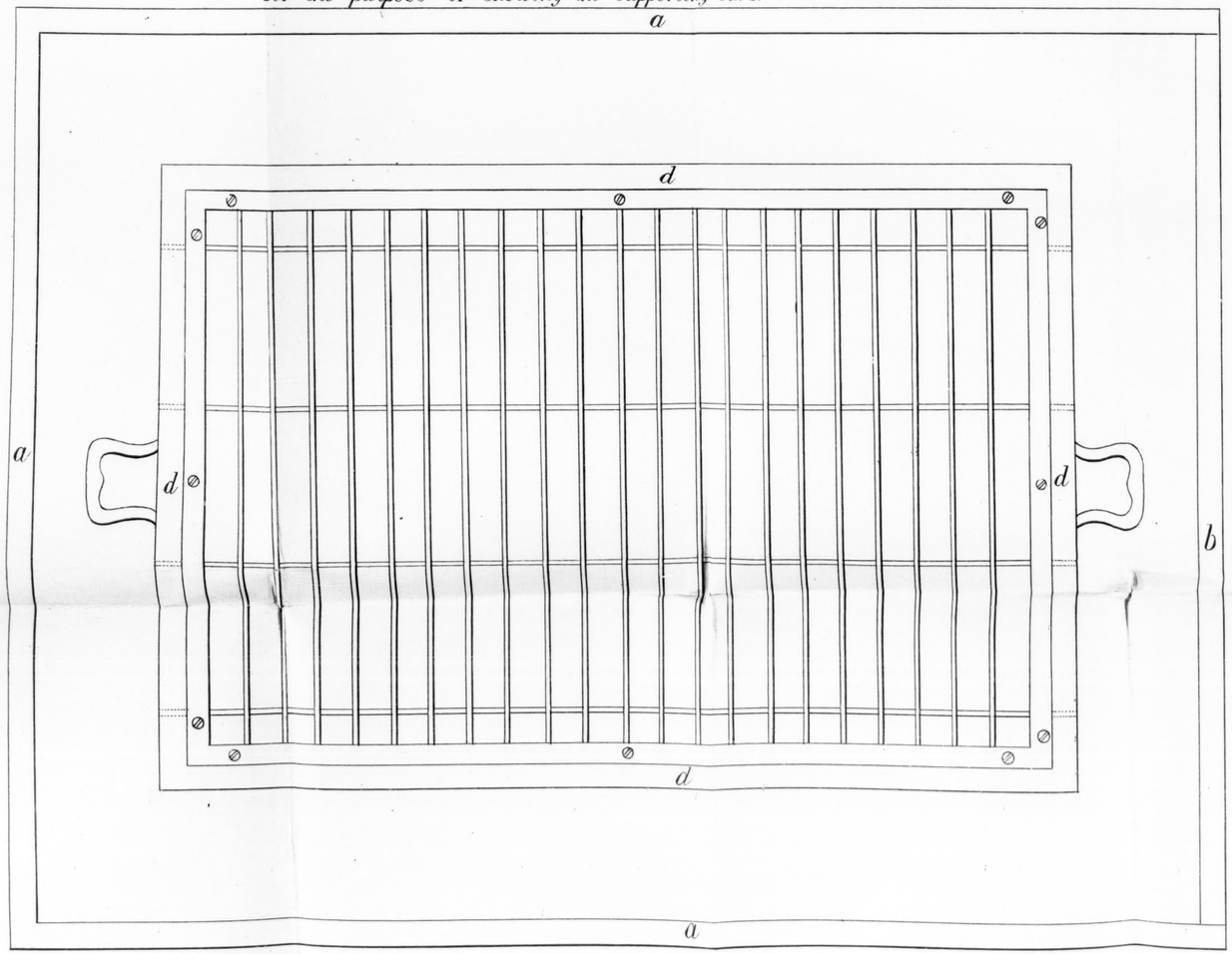


Transverse section of water box a, showing pulp box d in end elevation.

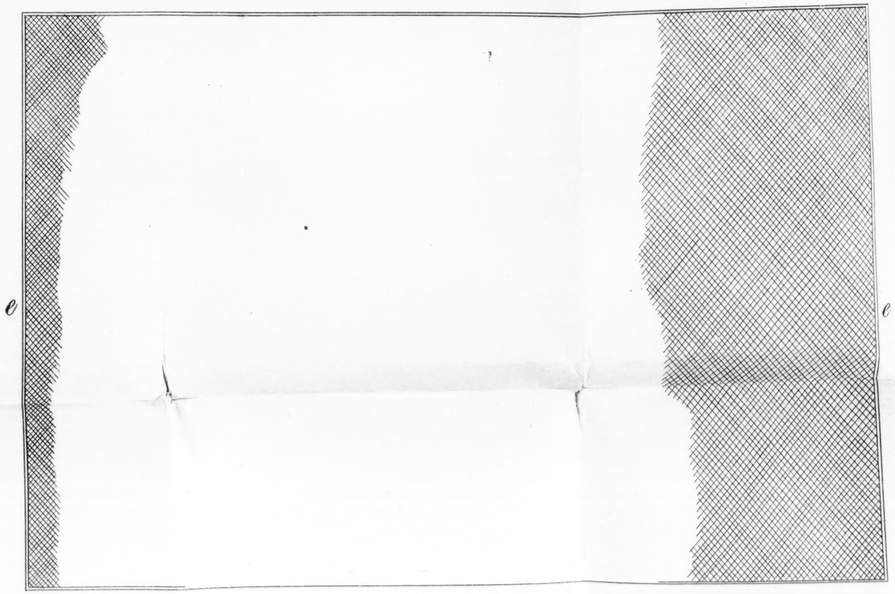


SHEET. 2

Plan of the boxes a and d the brass wire cloth being removed for the purpose of showing the supporting bars.



Plan view of a portion of the brass wire cloth which forms the mould e as seen in the longitudinal vertical section.

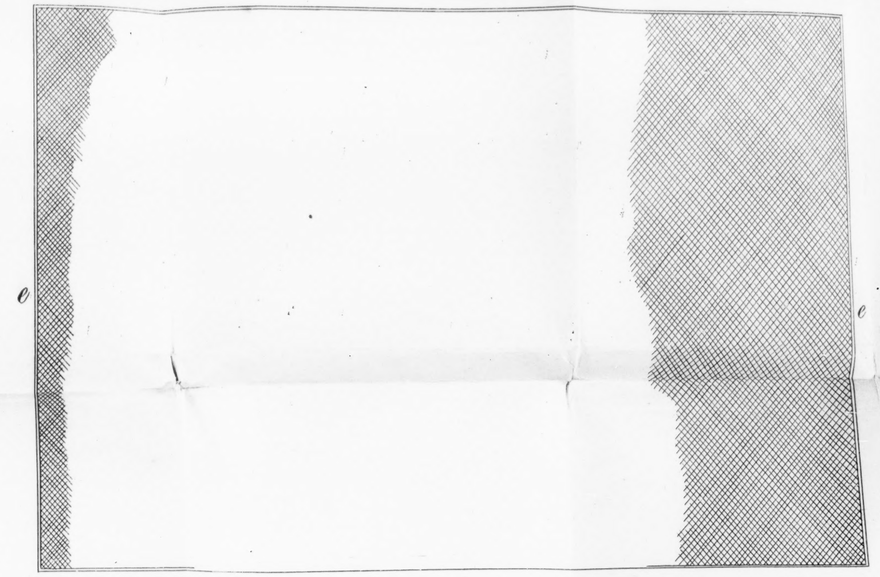


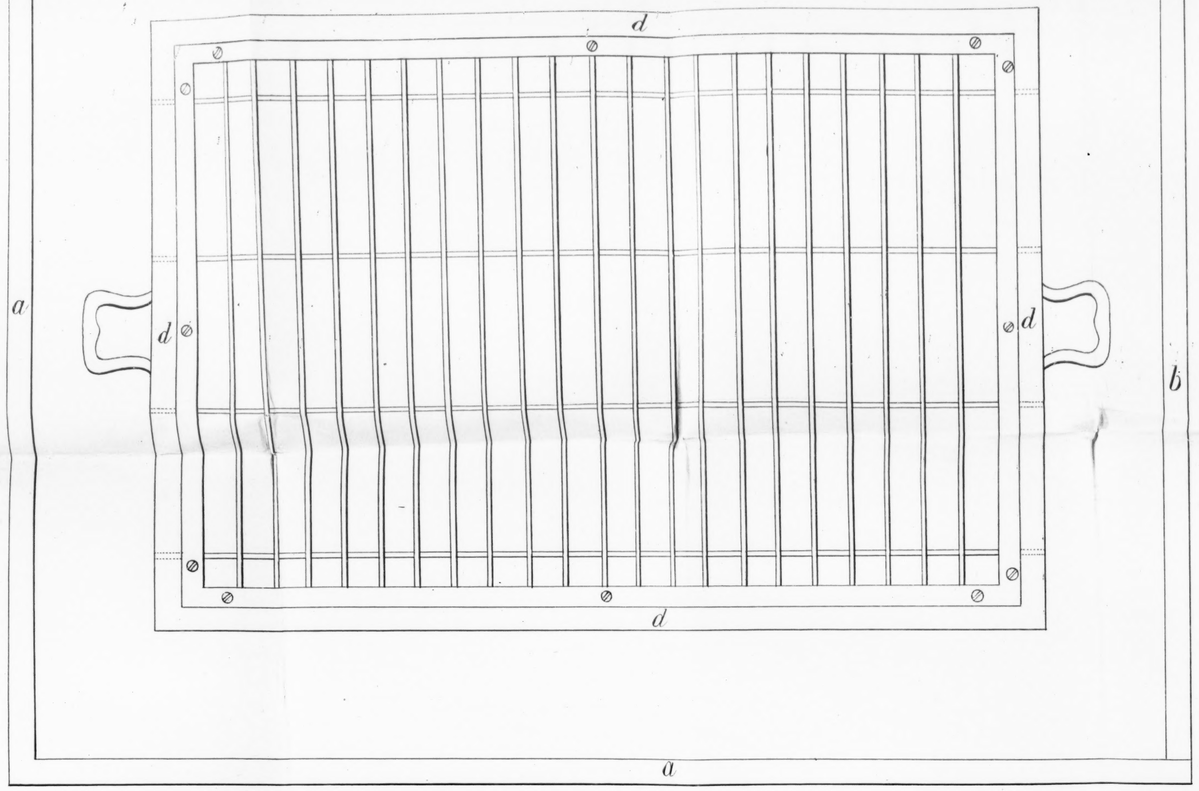
Longitudinal vertical section of water box a pulp box d and wire mould e

Transverse section of water box a, showing pulp

No 505 American Wood Paper Co
vs
Fibre Disintegrating Co,
page 785

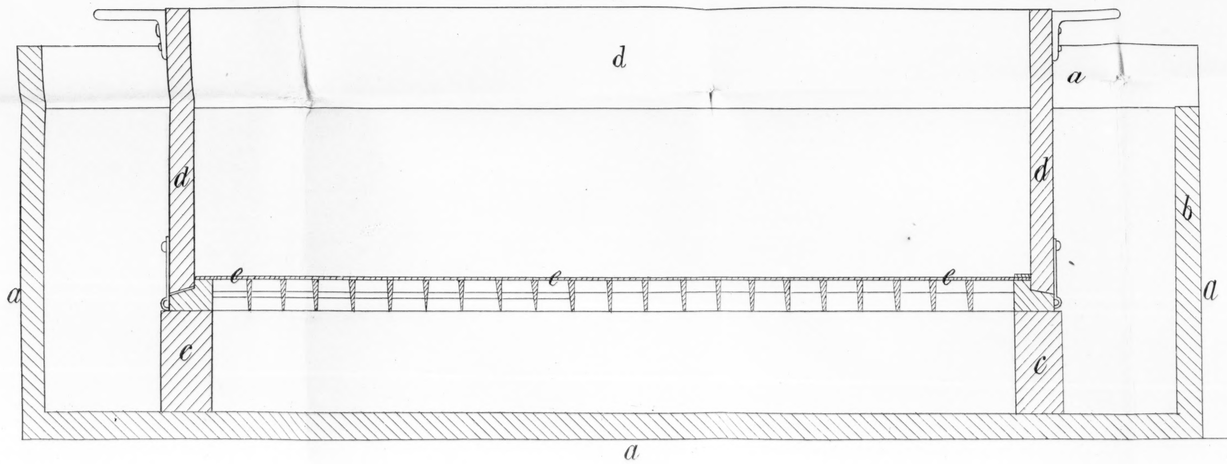
brass wire cloth which forms the mould e
as seen in the longitudinal vertical section.



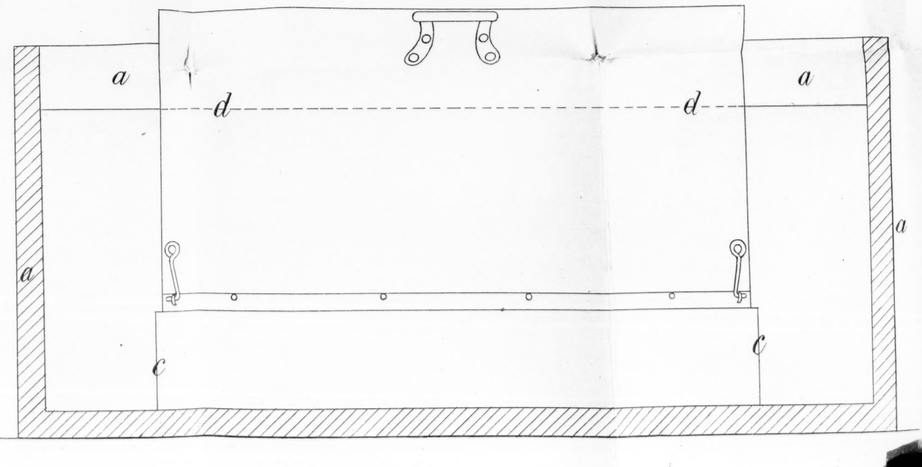


Longitudinal vertical section of water box a pulp box d and wire mould e

Fig 3.



Transverse section of water box a, showing pulp box d in end elevation.



No. 505 American Wood Paper C
vs.
Fibre Disintegrating Co
page 784.

Lemuel W. Wright
Machinery for Manufacturing Paper
Patented March 27th 1857.

Fig. 1.

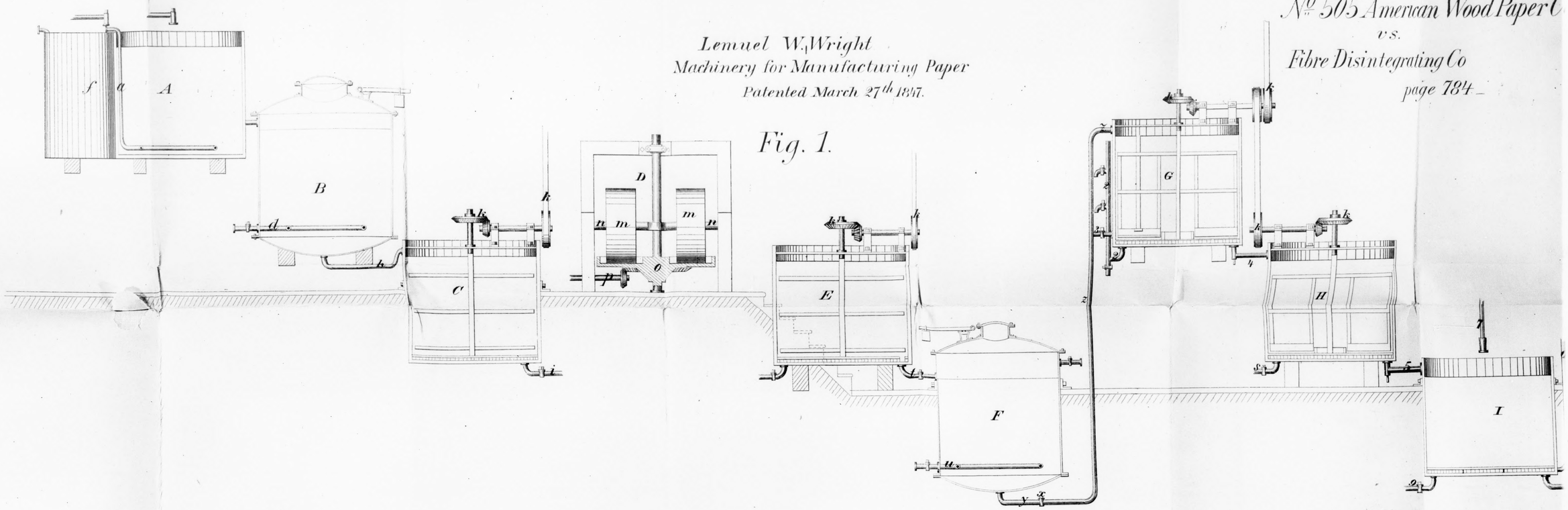
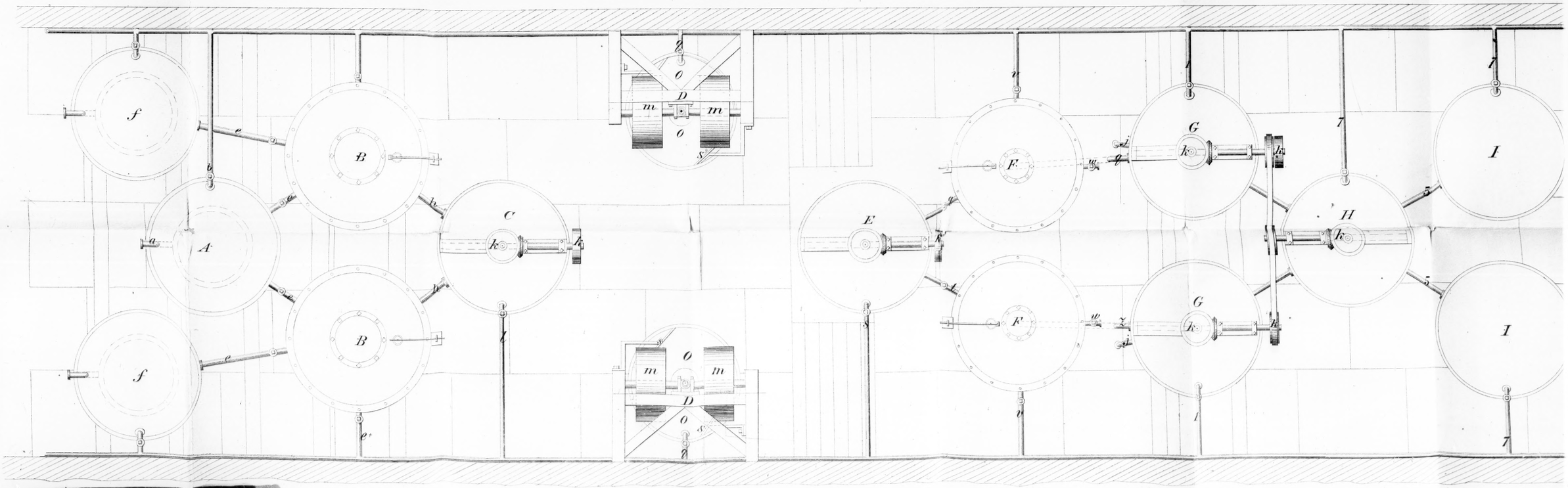


Fig. 2.



No. 505 American Wood Paper Co
vs.
Fibre Disintegrating Co
page 784

Lemuel W. Wright
Machinery for Manufacturing Paper
Patented March 27th 1847.

Fig. 1.

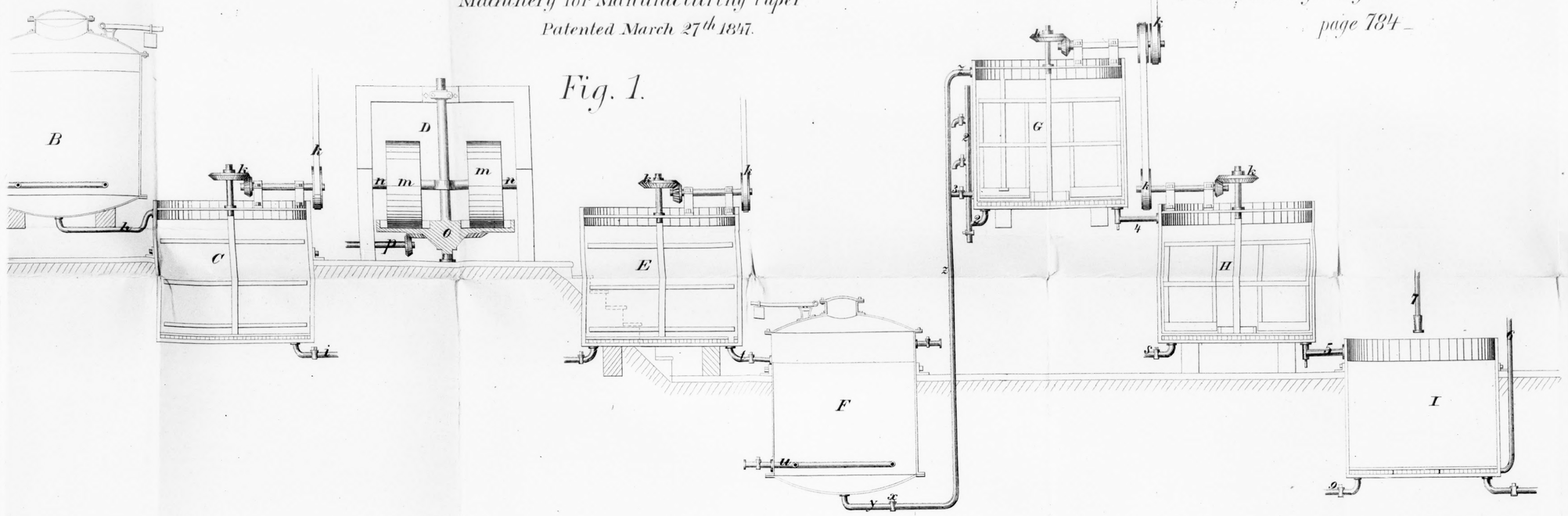
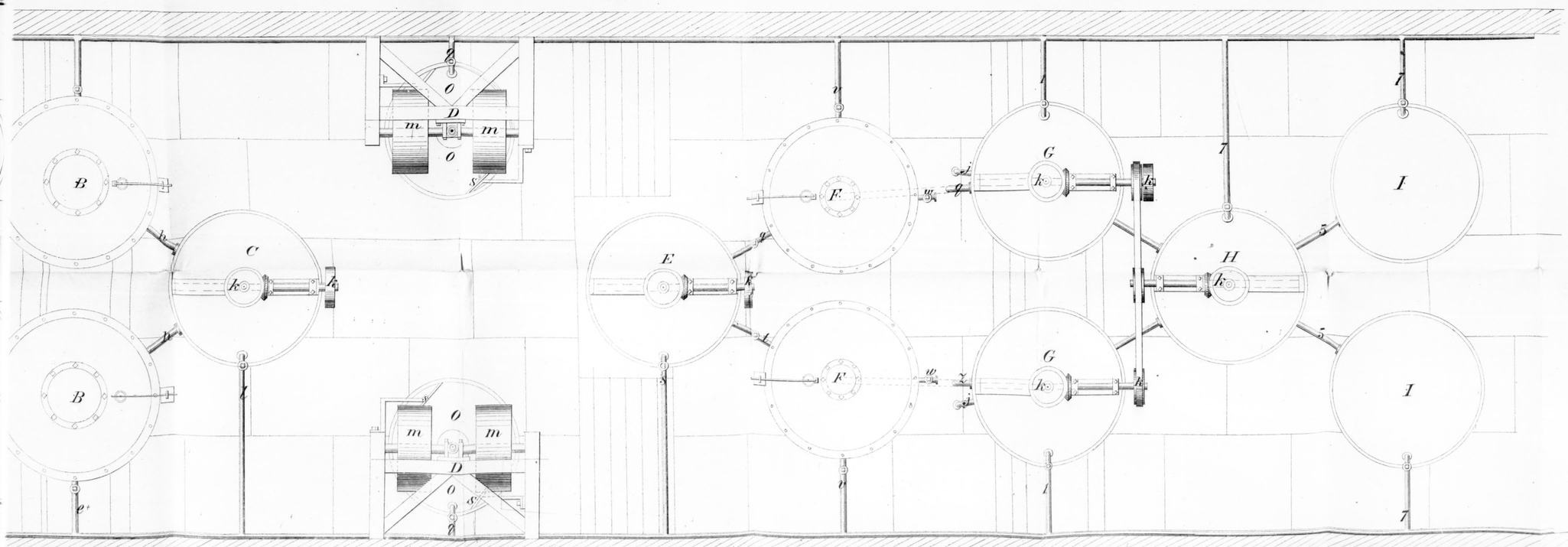


Fig. 2.



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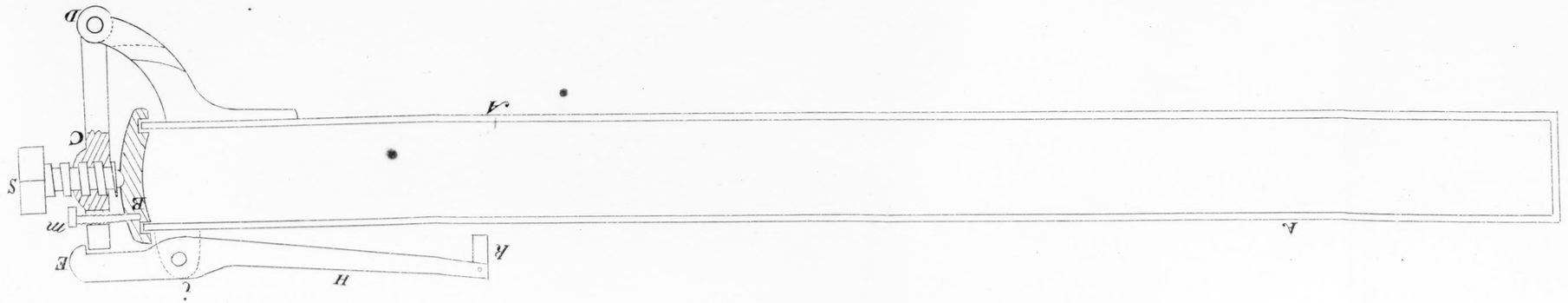
3rd August 1858.

Patent to Azel. Storrs Lyman
Copy- Exhibit 25

Original taken from files and this substituted for Original by consent. Dated Dec. 2nd 1871.

W. P. Arnold.



A. S. Lyman - Mode of seperating Wood fibre &c.
Patd Aug 3. 1858.
(No 21 077)

American Wood Paper Co.

No. 505. vs. page 848.

Fibre Disintegrating Co.

Fabrication du papier de bois par M.M. Montgolfier frères.

Fig. 1.

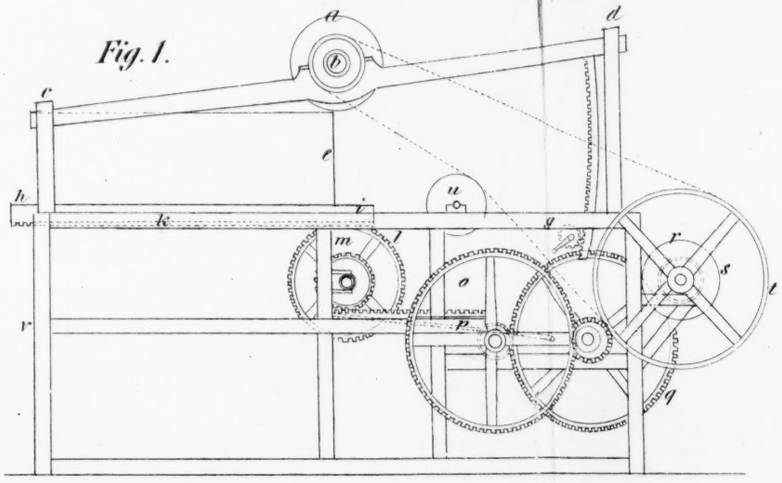


Fig. 2.

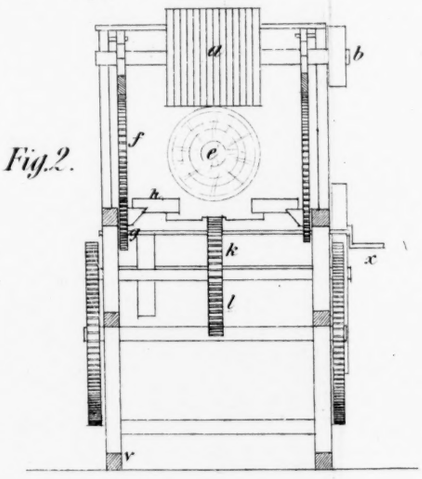
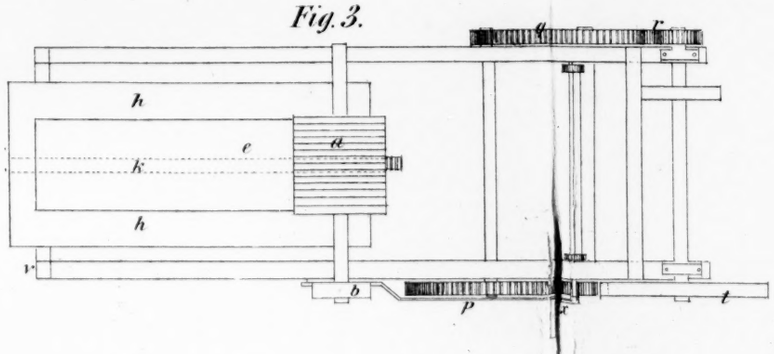
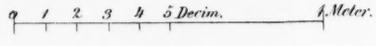


Fig. 3.





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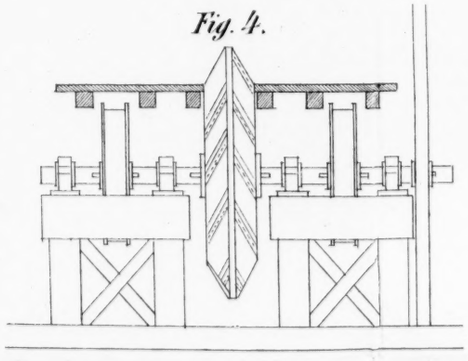

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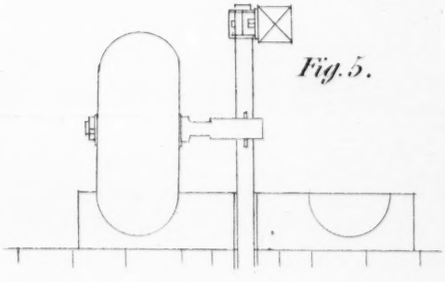


American Wood Paper Co.

N° 505 *vs.* *Page 890.*

Fibre Disintegrating Co.

Lessivage & blanchement des chiffons par Mr Wisse.

Fig 4.

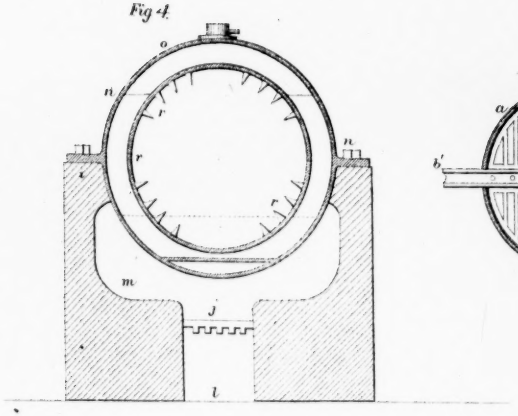
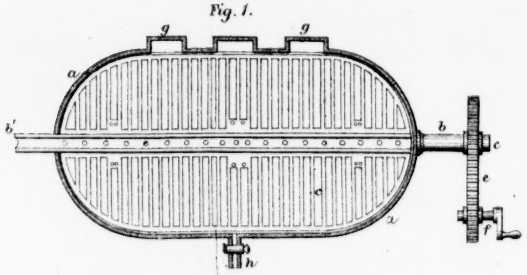


Fig. 1.



2 Metres.

Fig 2.

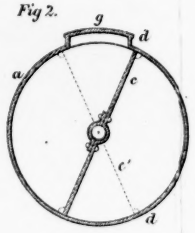
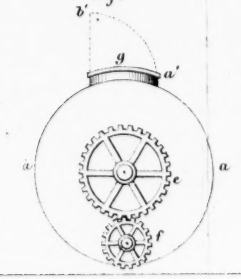


Fig 3.



American Wood Paper Co.

No. 505. vs. Page 907.

Fibre Disintegrating Co.

Henry B. Tremaine

Fig. 1.

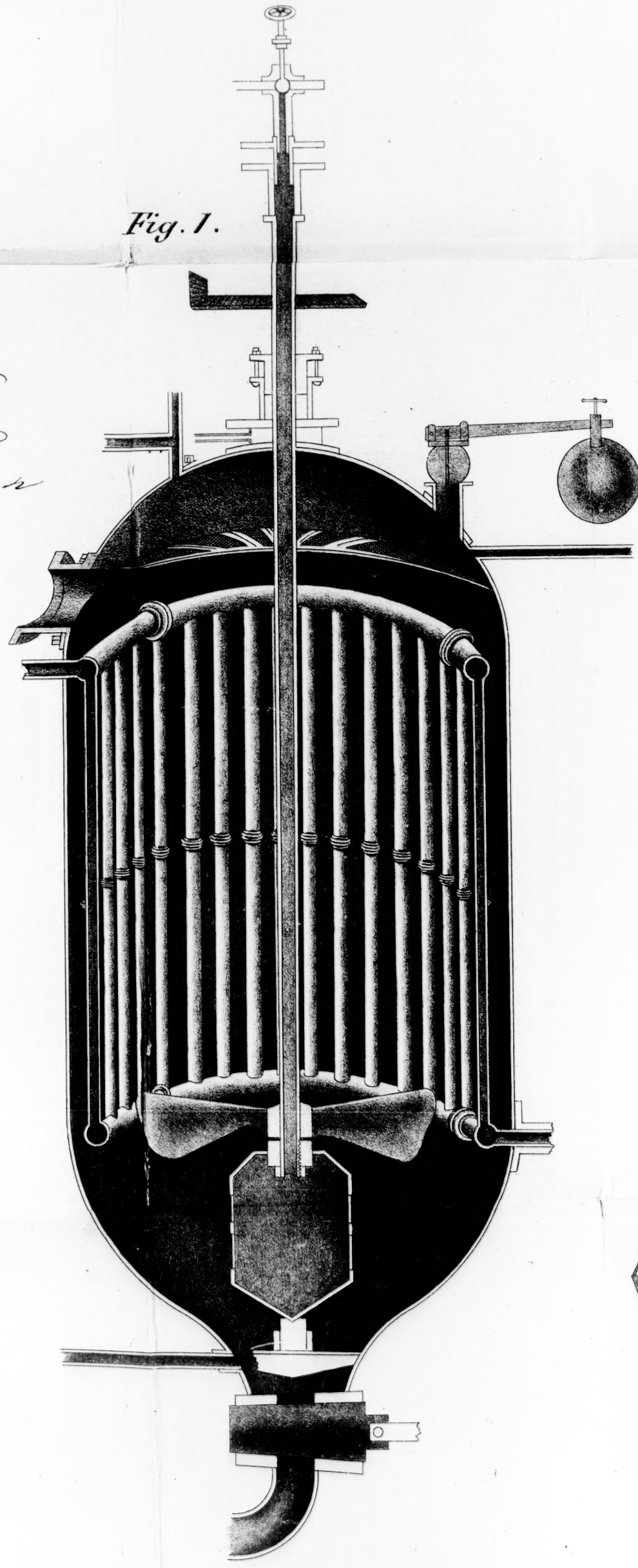


Exhibit No. 36

B. L. Stevens

Examiner

Fig. 2.

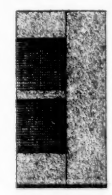


Fig. 3.

American Wood Paper Co.

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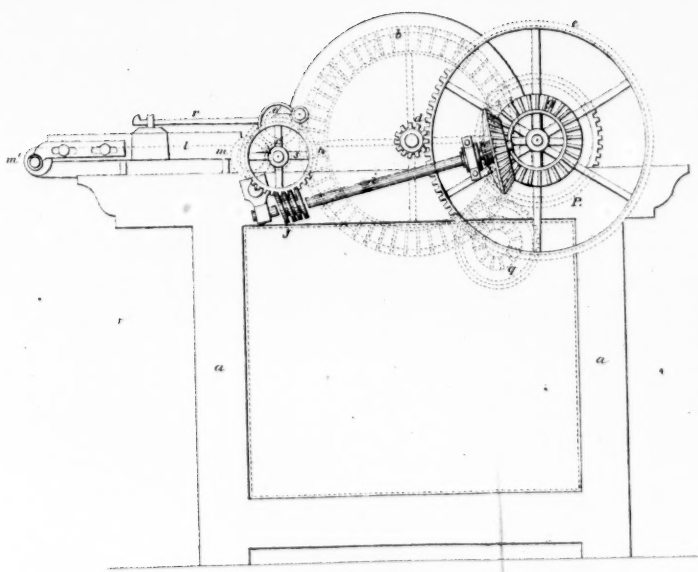
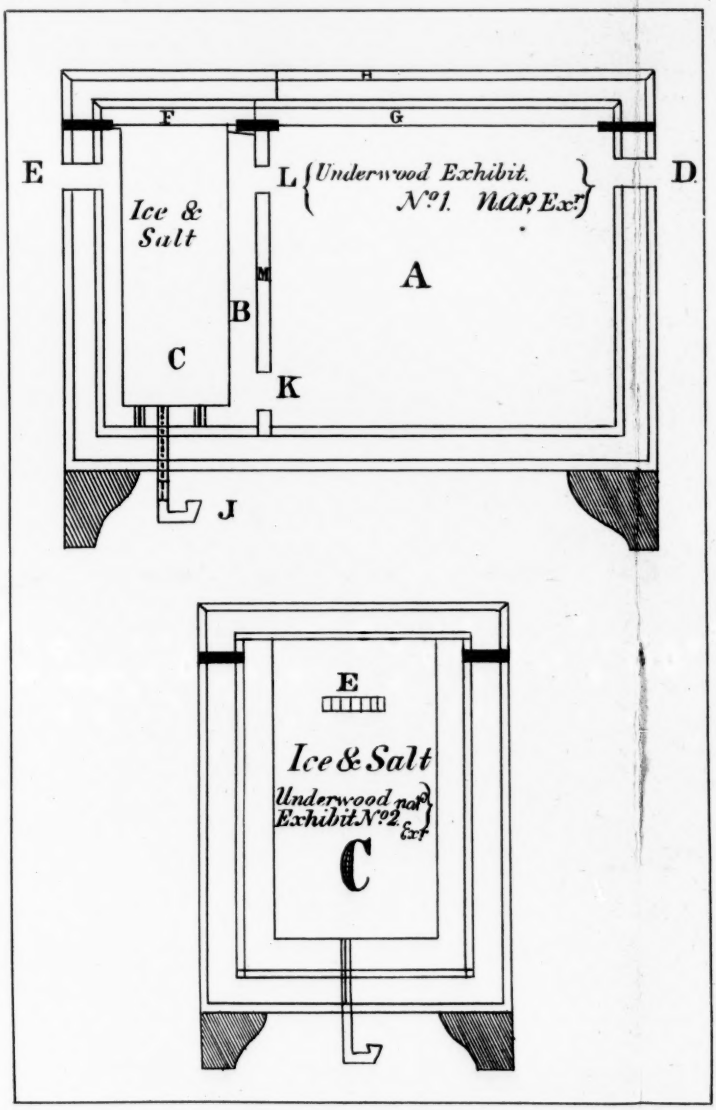
Fibre Disintegrating Co.

Pate a papier par Mr Moinier Legoux.



No. 534. { Brown vs: Piper. } Page 865.